

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 23-10063-shl

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5 In the Matter of:

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7 GENESIS GLOBAL HOLDCO, LLC,

8

9 Debtor.

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12 United States Bankruptcy Court

13 300 Quarropas Street, Room 248

14 White Plains, NY 10601

15

16 September 18, 2023

17 10:09 AM

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21 B E F O R E :

22 HON SEAN H. LANE

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: ALIANNA PERSAUD

1 HEARING re Doc. #701 Notice Of Agenda

2

3 HEARING re EVIDENTIARY HEARING RE: Doc. #603 (FTX

4 Settlement) Motion To Approve Compromise / Genesis Debtors

5 Motion Pursuant To Federal Rule Of Bankruptcy Procedure

6 9019(a) For Entry Of An Order Approving Settlement Agreement

7 With FTX Debtors

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25 Transcribed by: Sonya Ledanski Hyde

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1 P R O C E E D I N G S

2 THE COURT: Good morning to you all. We are here
3 -- well, I know we have some folks on Zoom as well. We're
4 here this morning for Genesis Global Holdco, LLC, a hearing
5 on the debtors' motion seeking of authority under Rule 9019
6 for a settlement. And we'll start, as we always do, with
7 appearances. This time it's in-person because it's an
8 evidentiary hearing. So we'll start with the debtors.

9 MR. BAREFOOT: Good morning, Your Honor. Luke
10 Barefoot and Andrew Weaver, for the debtors-in-possession.

11 THE COURT: All right. Good morning. And on
12 behalf of the official committee?

13 MR. SHORE: Good morning, Your Honor. Chris Shore
14 and Colin West, from White & Case.

15 THE COURT: All right, and on behalf of the ad hoc
16 group?

17 MR. SAZANT: Good morning, Your Honor. Jordan
18 Sazant, joined by Peter Doyle and William Dawson, of
19 Proskauer Rose, on behalf of the ad hoc group.

20 THE COURT: All right. Good morning. Any other
21 appearances for this morning?

22 MR. GLUECKSTEIN: Good morning, Your Honor.

23 THE COURT: Just to be on the safe side, I'd make
24 your way to a microphone. Any microphone.

25 MR. GLUECKSTEIN: Good morning, Your Honor. Brian

1 Glueckstein and Benjamin Beller, Sullivan & Cromwell, for
2 the FTX (indiscernible) --

3 THE COURT: All right. Good morning. Anyone
4 else? Sorry. I always think of this as like a baseball
5 stadium. There's seating one way and seating at a right
6 angle, which is a bit awkward. I did in a prior life try a
7 jury trial in this courtroom. So I always think of you all.
8 I'll always forever think of you on that side as the juror.
9 As jurors. So go ahead, Mr. Zipes.

10 MR. ZIPES: Greg Zipes, with the U.S. trustee's
11 office. I don't expect to speak today, Your Honor.

12 THE COURT: All right. Happy to have you here.
13 Anyone else?

14 MR. FRELINGHUYSEN: Good morning, Your Honor.
15 Anson Frelinghuysen, with Hughes Hubbard & Reed, for the
16 Gemini Trust Company.

17 THE COURT: All right. Good morning.

18 MR. AULET: Good morning, Your Honor. Kenneth
19 Aulet, of Brown Rudnick, for the (indiscernible) --

20 THE COURT: Good morning. All right. So with
21 that, I think I'd gotten an inquiry from someone about being
22 able to do some things on Zoom for today's hearing. As you
23 all no doubt know, the administrative office has issued new
24 guidance with the end of the COVID emergency, which sounds
25 fatally like a Stephen King novel appellation. But in any

1 event, we're all trying to figure out the appropriate way to
2 handle things going forward. And we'll obviously get that
3 information out to folks who appear at our court regularly
4 as soon as we can. But what's pretty clear is that things
5 that are evidentiary are the most important things to return
6 back to court. For lots of reasons that we all know and
7 understand, it's the best way to conduct proceedings.

8 So with that, we are here for an evidentiary
9 hearing on the Rule 9019. It's the debtors' motion. I know
10 we have a preliminary matter dealing with some discovery and
11 privilege issues, but I'll turn it over to debtors' counsel
12 to sort of set the stage for how to proceed this morning.

13 MR. BAREFOOT: Good morning, Your Honor. Again
14 for the record, Luke Barefoot, from Cleary Gottlieb, for the
15 Genesis debtors. Your Honor, we are here this morning on
16 the evidentiary hearing for approval of the debtors' motion
17 under Rule 9019 of the settlement agreement with the FTX
18 debtors, which was originally filed at Docket Item 603.

19 The parties have agreed to dispense with the need
20 for opening statements given the limited evidentiary issues
21 and the single witness that we have. As you mentioned, we
22 do have a preliminary matter. If Your Honor would like any
23 further arguments or statements from counsel in support of
24 their respective positions, we'd be happy to do that. But
25 we believe that with the briefing that Your Honor received

1 over the weekend, that issue is fully submitted and so we
2 would, subject to Your Honor's views, be prepared to hear
3 Your Honor's ruling on the evidentiary issue, proceed
4 directly to Mr. Islim's testimony and any cross and redirect
5 and then proceed to argument.

6 THE COURT: All right. Thank you very much. I
7 did receive and review all of the documents relating to the
8 privilege issue that was teed up in the ad hoc group of
9 Genesis lenders' memorandum concerning debtors' improperly
10 withheld documents at Docket 709. The debtors filed a
11 response to that and then the committee filed a joinder at
12 Docket 713. I confess I don't have the debtors' response in
13 terms of the docket number, but it's on there.

14 And so based on what I've read and what we
15 discussed the other day, it's a pretty straightforward issue
16 and I don't need any party to provide additional argument.
17 But it's the ad hoc group's motion, so I'll hear from you,
18 but if there's going to be additional argument, it's going
19 to be really short.

20 MR. DOYLE: Thank you, Your Honor.

21 THE COURT: You grabbing a binder leads me to
22 believe you may have a different view about how long we're
23 going to chat about this.

24 MR. DOYLE: I will be brief, Your Honor. Peter
25 Doyle, of Proskauer, for the ad hoc committee. Your Honor,

1 we submitted three decisions to the court. The debtor
2 submitted approximately ten. The only decision addressing
3 the claim for common interest between -- and holding the
4 claim of common interest between the debtor is the In re
5 Quigley decision. That was 2009, Chief Judge Bernstein and
6 It found there was no common interest. The rest of the In
7 re Quigley decision, debtors argue too much in arguing that
8 it is sufficient to both be aligned in trying to grow the
9 estate, obviously differences in strategy, differences which
10 evolved and --

11 THE COURT: But what's the alternative? Right?
12 So as is often the case, you look at the legal tests
13 involved and the niceties and start thinking about how they
14 apply in the real world. And it can be a little confusing
15 to do sometimes by just looking at the situation here.

16 So a debtor is supposed to get buy-in from the UCC
17 whenever possible, right? That's one of the things. Again,
18 it's Chapter 11 is run for the benefit of all stakeholders.
19 A committee exists to give statutorily authorized
20 essentially opinions to the estate. And so if the debtor
21 wants to share and convince the committee of the
22 righteousness of the course of action, how is it supposed to
23 do it if it can't be candid?

24 MR. DOYLE: It can certainly advocate, Your Honor
25 and the practical reality --

1 THE COURT: Well right, but under your rule,
2 they'd have to advocate to the committee like they advocate
3 to somebody on the street, in formal pleadings and nothing
4 else, no candid conversations because all of those things,
5 by sharing them with the committee, it's gone.

6 MR. DOYLE: No. As to a certain point, clearly,
7 they could have -- the debtors and anyone else could have a
8 common interest. The court struggles with this all the
9 time. That's why many courts require that joint defense
10 agreements have to be in writing because there's a point in
11 time where you are antagonistic and a point in time where --

12 THE COURT: But the rule doesn't require it.
13 Right? And the rule doesn't require it for a reason, right?
14 To have flexibility in circumstances like this, particularly
15 where it's not lost on anyone where the debtors and the UCC
16 stood on some of these issues.

17 But I understand. You're citing to Quigley. I
18 read Quigley, as I read all the decisions that were provided
19 to me, which prevented me from watching the first half of
20 the Giant game, which was the half to miss. So I -- it's
21 fine. But again, I'm having a problem with your rule, your
22 proposed rule wreaking havoc in Chapter 11 cases in terms of
23 working between the debtor and a committee.

24 MR. DOYLE: Your Honor, our rule is -- we believe,
25 we propose that our rule is the current rule, is the actual

1 rule. It's the rule from Quigley and it's how this is
2 supposed to be done by debtors. And what debtors have done
3 here in arguing that anyone who wants to grow the estate has
4 a common interest is far too broad.

5 THE COURT: I don't -- well, I don't think it's
6 articulated quite that broadly, but I see your point.
7 Anything else, counsel?

8 MR. DOYLE: We rest on Quigley, Your Honor.

9 THE COURT: All right, thank you. Anything else
10 very briefly from any other party?

11 MR. WEAVER: Your Honor, Andrew Weaver, on behalf
12 of the debtors. We would rest on our papers, Your Honor. I
13 think the facts and circumstances that are before you is
14 what's relevant and any decision you make would be tied to
15 those facts and circumstances and we (indiscernible) --

16 THE COURT: All right.

17 MR. WEAVER: Thank you, Your Honor.

18 THE COURT: Thank you very much. All right. With
19 that, before the court is the ad hoc group of Genesis
20 lenders' request as memorialized in their memorandum at
21 Docket 709 concerning what they characterize as debtors'
22 improperly withheld documents. As I said before, there's a
23 debtors' response and there's a committee joinder.

24 And just to briefly set the stage here, the
25 debtors have asked the court to approve a proposed

1 settlement between debtors in these Chapter 11 cases and FTX
2 Trading, which has its own bankruptcy in Delaware, In re FTX
3 Trading Limited, Case Number 22-11068. The ad hoc group has
4 objected to the settlement motion and propounded discovery
5 requests in an effort to gain additional information about
6 the debtors' analysis of the strength and weaknesses of
7 their respective claims that are at issue in the proposed
8 settlement.

9 And based on the parties' papers, it appears that
10 everyone agrees that the debtors have refused to produce
11 some 77 documents that are responsive to the ad hoc group's
12 discovery request, although I think the committee notes that
13 number is actually smaller than that given the multiple
14 iterations of documents, as is often the case as the emails
15 fly fast and furious. But each of the withheld
16 communications and documents were exchanged between counsel
17 of the debtors and counsel for the UCC. And debtor has
18 asserted the documents are protected by the work product
19 privilege and also the common interest privilege.

20 So the debtors asserted their position and then in
21 addition, the committee has in its joinder states it's
22 reviewed all 77 documents and that all portions of the
23 relevant communications that were authored by committee's
24 council in response to the debtors' request, in their view,
25 are in fact protected from discovery by the attorney work

1 product doctrine. And the committee adopts the debtors'
2 assertion of attorney work product with respect to the
3 portions of communications authored by committee's counsel.
4 And therefore the committee fully joins in the arguments
5 made by the debtors in their response.

6 So with that, I will turn to the standard here and
7 I think that's the one thing that everybody agrees upon. So
8 we'll start with the work product doctrine and that's
9 intended to preserve a zone of privacy in which a lawyer can
10 prepare and develop legal theories and strategy, quote,
11 "with an eye towards litigation, free from unnecessary
12 intrusion by adversaries." And the most common case cited
13 for that is Hickman v. Taylor, 329 US 495, 510-11, a case
14 from 1947 that is quoted and quoted and requoted in cases,
15 including all the cases that are provided by the parties.

16 So it's well established that the party asserting
17 work product privilege protection bears the burden of
18 establishing its applicability to the case at hand. There's
19 a Second Circuit case for that, In re Grand Jury Subpoenas
20 Dated March 19, 2002 and August 2, 2002. The case is at 318
21 F.3d 379, 384 (2d Cir. 2003), which collects cases.

22 There are three conditions that must be met to
23 earn work product protection. The materials must be, one, a
24 document or tangible thing; two, prepared in anticipation
25 for litigation; and three, prepared buy or for a party or

1 his or her representative.

2 So there are other applicable standards here as
3 well. And the other one here is the common interest
4 doctrine. And as the ad hoc group submission explains,
5 common interest doctrine serves an exception to the general
6 rule that voluntary disclosure of confidential privileged
7 material to a third party waives any applicable privilege,
8 including materials protected by the work product doctrine.
9 See *In re Hypnotic Taxi LLC*, 543 BR 365, at 314 (Bankr.
10 E.D.N.Y 2017).

11 The common interest doctrine, as explained in the
12 ad hoc's papers, only applies to party to whom the protected
13 information was disclosed, one, shares a common legal
14 interest and, two, the sharing of the privileged information
15 was intended to be in furtherance of the common legal
16 interest shared by them.

17 I will note that the ad hoc's pleadings leave out
18 a part of the test, which is that the holder of the work
19 product privilege waives it only if voluntary disclosing it
20 is done in such a manner as likely to be revealed to the
21 adversary. See *In re SN Phelps and Company v. Circle K*
22 *Corp.*, 199 BR 92, at 100 (Bankr. S.D.N.Y. 1996).

23 So turning to this case, it seems that the
24 withheld documents here appear to be classic examples of
25 work product materials; that is, documents containing the

1 mental impressions, opinions and legal assessments of
2 counsel for the debtor and debtors' and the creditors
3 committee. Indeed, the ad hoc doesn't really appear to
4 seriously challenge this fact, although they say that it's
5 not established based on the information provided in the
6 privilege log. Certainly if there's a dispute, the court is
7 happy to review a document or two in camera, but frankly,
8 that seems unnecessary given the description of the
9 documents and the representation of counsel.

10 So given what I've been presented with, I'm
11 content in finding that these are work product information,
12 protected information that's at issue here.

13 So with that, I will then turn to waiver and
14 common interest privilege. So in these circumstances, the
15 ad hoc group contends that the debtor waived any privilege
16 here by sharing the information with the committee and
17 contends that that sharing of information is not covered by
18 the common interest privilege because, in the ad hoc group's
19 view, there could be no common interest privilege until
20 September 5th when the UCC filed its reservation of rights
21 as to the settlement.

22 The court disagrees. The debtors and the
23 committee clearly share a common interest here observing and
24 maximizing the value of these estates, but more specifically
25 in evaluating the potential settlement with the FTX debtors

1 in order to reach a value maximizing resolution of the FTX
2 debtors' significant claims that are again a resolution
3 that's in furtherance of the value maximizing goal.

4 And so there are cases that support such a notion.
5 See for example, In re Maxus Energy Corporation, 617 BR 806,
6 824 (Bankr. D. Del. 2020), a case applying the common
7 interest doctrine to communications between debtors and the
8 creditors committee when their joint goal was achieving a
9 consensual plan of reorganization between the debtors and
10 UCC. After all, that plan is a value maximizing exercise.

11 See also the In re Quigley case, 2019 Westlaw
12 9034027, at * 4, (Bankr. S.D.N.Y April 24, 2009) applying a
13 common interest document based on shared interest in
14 confirming a plan of reorganization. See also In re Leslie
15 Controls, 437 BR 493, at 502 (Bank. D. Del 2010), a common
16 interest doctrine between the debtor and ad hoc group of
17 creditors based on their common interest in maximizing the
18 asset pool of its creditors. See also In re Tribune
19 Corporation, 2011 Westlaw 386827, at * 3, (Bank. D. Del
20 February 3, 2011) common interest doctrine where the debtors
21 and noteholders have a shared interest in gaining court
22 approval of the plan and a settlement.

23 So in response to the notion this is a very
24 generalized assertion that shouldn't survive here because
25 it's too general, I disagree. The common interest here is

1 confirmed by the facts and circumstances of this particular
2 case, more particularly by the common positions taken by the
3 debtors and the UCC as to litigation with FTX well before
4 the Rule 1919 motion was filed that's on for today.

5 Indeed, the battle lines between the debtors and
6 FTX were drawn when the FTX debtor filed their motion in
7 this court to lift the stay seeking to litigate their claims
8 elsewhere, namely in their own bankruptcy case for all the
9 reasons explained in their pleadings. The debtors responded
10 by filing their motion to estimate the FTX claims in this
11 court. And notably, the UCC filed a joinder to the debtors'
12 opposition to FTX's lift stay motion. And it also joined
13 with the debtors at the June 15th hearing arguing that
14 estimation of the FTX's claims would bring benefits to the
15 estate. And so it's pretty clear from those activities that
16 as to FTX, the debtors and the committee have a common
17 interest and have acted accordingly.

18 And so, in reaching that conclusion, I did review
19 my notes from the hearing on June 15th when there was
20 argument on the estimation motion and discussion of the
21 estimation motion. And I also went back to see the joinder
22 and reservation of rights of the official committee of
23 unsecured creditors to debtors' objection to the motion of
24 FTX Trading Limited and its affiliated debtors for order to
25 modify the automatic stay. And that's at Docket 407.

1 So, last but not least, the court concludes that
2 the work product privilege here has not been waived for
3 another reason. The materials were not disclosed in a
4 manner likely to reveal the privileged materials to the
5 adversary here that is FTX. And as the debtors note in
6 their papers, nowhere does the ad hoc group suggest that
7 disclosure among the debtors and the committee made it
8 likely that the work product at issue would be disclosed to
9 the adversaries in question, that is, the FTX debtors. And
10 that's because the committee's bylaws as well as its
11 fiduciary duties to all creditors, would have prevented
12 disclosure of their respective impressions and reactions to
13 the FTX debtors' claims and any settlement thereon to the
14 FTX debtors.

15 So, for all those reasons, and considering all the
16 facts and circumstances of this case and applicable law and
17 the party submissions, the court is going to deny the ad hoc
18 group's request to require the disclosure of the documents
19 in question and override the work product privilege and the
20 common interest privilege at issue in this case.

21 So with that, I think we're ready to proceed with
22 the hearing on the 9019 motion. Counsel?

23 MR. WEAVER: Thank you, Your Honor. Again, for
24 the record, Andrew Weaver, Cleary Gottlieb Steen Hamilton,
25 on behalf of the debtors. Your Honor, one bit of

1 housekeeping before we present Mr. Islim's testimony.
2 Pursuant to Paragraph 48 of the case management order,
3 parties submitted a joint exhibit book to chambers on
4 Friday, which I believe (indiscernible) available for you.

5 THE COURT: I do have that, and it's got nine
6 tabs. Am I correct?

7 MR. WEAVER: That is correct, Your Honor.

8 THE COURT: All right.

9 MR. WEAVER: For purposes of the record today, we
10 would ask to move those joint exhibits into the record
11 before Your Honor.

12 THE COURT: All right. Let me hear from the other
13 side.

14 MR. DALSEN: Your Honor, William Dalsen, from
15 Proskauer, for the ad hoc group. We don't object, Your
16 Honor. We would reserve as to for the deposition
17 transcript. There were two objections we made during
18 redirect. We'd reserve as to those in case that comes up.
19 And also, I'm not sure if it was added to the binder, but
20 Mr. Islim did submit errata that should be appended to the
21 deposition transcript.

22 THE COURT: All right. Thank you very much.

23 MR. DALSEN: Thank you.

24 THE COURT: All right. Anybody else wish to be
25 heard on this issue? All right. So let me just make it

1 clear what my approach is to exhibits in any evidentiary
2 matter, which is I rely on the portions of the exhibits that
3 are called out by the parties as relevant for the
4 proceeding. Nobody wants trial by ambush and the loser or
5 winner be able to cite things in some appeal that nobody
6 talked about at the evidentiary hearing and say, well, my
7 cousin Vinny would say that's the case cracker.

8 So I will rely on all of you to identify for me
9 the parts of the exhibits. And this is particularly true
10 for the deposition transcript, since we have the live
11 witness here that you, I think, are relevant. And that's
12 great. And I'm going to assume the deposition transcript is
13 really here just for my use and any impeachment or
14 reference. And so with that, counsel, take it away.

15 MR. WEAVER: Thank you, Your Honor. At this
16 point, the debtors would call Derar Islim to the stand.

17 THE COURT: Please.

18 MR. ISLIM: Good morning.

19 THE COURT: And if you'd raise your right hand and
20 (indiscernible) swear the witness.

21 CLERK: I can do it.

22 THE COURT: Please.

23 CLERK: Do you solemnly swear or affirm that the
24 testimony you're about to provide is the truth, the whole
25 truth and nothing but the truth?

1 MR. ISLIM: (indiscernible)

2 THE COURT: All right. Please have a seat. And
3 just a note, if you're ever asked about any documents, and
4 no doubt you will be given a binder, just take your time
5 finding what you need to look at, and we'll wait because
6 you're the witness. So with that, counsel?

7 MR. WEAVER: Thank you, Your Honor.

8 DIRECT EXAMINATION OF A. DERAR ISLIM

9 BY MR. WEAVER:

10 Q Just briefly, good morning, Mr. Islim.

11 A Good morning to you.

12 Q Could you please introduce yourself to the court?

13 A Yes. I'm Derar Islim. I'm the interim chief executive
14 officer of Genesis Global Trading.

15 THE COURT: Good morning. Do me a favor. Get as
16 close to that microphone. Maybe a little bit closer. You
17 don't have to be right on top, but just so everybody can
18 hear you. Thank you.

19 MR. WEAVER: Thank you, Your Honor.

20 BY MR. WEAVER:

21 Q How long have you been in that position, Mr. Islim?

22 A For three years and four months.

23 Q I'm sorry. In the role of interim CEO.

24 A For just about a year.

25 Q Thank you. Did you provide a declaration in this

1 matter?

2 A Yes, I did.

3 MR. WEAVER: Your Honor, permission to approach.

4 THE COURT: Please.

5 MR. WEAVER: Your Honor, do you need to copy the
6 declaration?

7 THE COURT: If it's the one that was provided in
8 support of the motion, I have it.

9 MR. WEAVER: It is.

10 THE COURT: Thank you.

11 BY MR. WEAVER:

12 Q Mr. Islim, I've just handed you the declaration of A.
13 Derar Islim in support of the Genesis debtors' motion
14 pursuant to Federal Rule of Bankruptcy Procedure 9019(a) for
15 the entry of an order approving settlement agreement with
16 the FTX debtors. Do you see that?

17 A Yes, I do.

18 Q Is this a declaration that you submitted in this
19 action?

20 A Yes.

21 Q If you turn to the last page, Mr. Islim, is that your
22 signature?

23 A Yes, it is.

24 Q Is there anything in this declaration that you wish to
25 change?

1 A No.

2 MR. WEAVER: At this point, Your Honor, we would
3 ask to move Mr. Islim's declaration into evidence as his
4 direct testimony for purposes of today's hearing.

5 THE COURT: All right. Thank you very much. Any
6 objection?

7 MR. DALSEN: No objection, Your Honor.

8 THE COURT: All right. His declaration is
9 received as his direct testimony in this proceeding.

10 MR. WEAVER: Thank you, Your Honor.

11 THE COURT: And I assume at this point, you're
12 going to tender the witness for cross-examination.

13 MR. WEAVER: We will tender the witness for cross-
14 examination.

15 THE COURT: All right. Thank you very much. And
16 with that, I believe the ad hoc group is -- it's your
17 witness.

18 MR. DALSEN: Thank you, Your Honor. Just before
19 we get started, just some housekeeping. May I approach the
20 witness with a binder, please?

21 THE COURT: Sure.

22 MR. DALSEN: Thank you. And, Your Honor, may I
23 approach the bench with a binder?

24 THE COURT: Please.

25 MR. WEAVER: I'm sorry. Your Honor, there appear

1 to be additional exhibits here in the binder which we were
2 not made aware of before the hearing.

3 MR. DALSEN: Your Honor, we may or may not use
4 these exhibits with the witness, but they're available if we
5 need them.

6 MR. WEAVER: Your Honor --

7 THE COURT: So here's what I'd like to do. Well,
8 I don't know what the parties worked out or didn't work out
9 ahead of time, so maybe it's worth having a brief
10 discussion. Should the witness be here or not be here for
11 that?

12 MR. WEAVER: I don't think it's too substantive.
13 It's fine, Your Honor. So Your Honor --

14 THE COURT: All right. Go ahead.

15 MR. WEAVER: -- pursuant to the case management
16 order, we approached the ad hoc group after deposition on
17 Wednesday. We got a one-day extension to submit the joint
18 exhibits, which we appreciate, Your Honor, and told them
19 we'd be sending over our joint exhibits pursuant to the case
20 management order for them to review, let us know if they
21 have any issues and provide us with their list of exhibits.
22 We would combine them into the joint book, and we'd provide
23 them to Your Honor. We did that on Thursday morning. They
24 provided us their exhibits Thursday afternoon. We compiled
25 them, delivered them to your office's chambers on Friday,

1 and our understanding is those were the joint exhibits for
2 purposes of today's evidentiary hearing. We were never
3 informed, just now noticed additional exhibits that we
4 believe would be inconsistent with the court's practice and
5 the case management order for joint exhibits.

6 THE COURT: All right.

7 MR. DALSEN: Yes, Your Honor. William Dalsen,
8 from Proskauer, for the ad hoc group. Your Honor, I don't
9 take issue with the recitation of events, but, of course,
10 even though those are the joint exhibits, our view is that
11 there may be additional exhibits where we may need to ask
12 additional questions about them. Maybe impeachment
13 material, maybe refreshing recollection material. That's
14 why they're here. If there's a specific objection to some
15 of the specific additional exhibits in here, I'm willing to
16 entertain that.

17 THE COURT: So there are, if I'm counting right,
18 15 exhibits.

19 MR. DALSEN: That's right, Your Honor.

20 THE COURT: So I understand that the concept of
21 having exhibits that you use for purposes of cross-
22 examination and the distinguishment between that and things
23 that are evidence that you're putting in your case or things
24 you're just using for cross. What's your intention with
25 these? It is noteworthy there's 15 of these, so that's a

1 hefty number. So I'm just curious what your intention is.
2 Are you moving these into evidence or is your intention to
3 use them for cross-examination?

4 MR. DALSEN: Your Honor, we don't tend to move --
5 there are 15 listed here. But I believe there's significant
6 overlap. It's almost entirely overlapping with the
7 exception of a few with the exhibits that are joint. And so
8 for the additional ones, I do not intend to move them into
9 evidence. But they're here in case we need to use them
10 (indiscernible) --

11 THE COURT: All right. So here's what I'm going
12 to do. We'll wait and see how it goes, because certainly
13 there are times when it's appropriate to use a document for
14 examination of witness, and there's no intent to actually
15 put it into evidence. So we'll see how it goes. So I'll
16 reserve a ruling as to any objection. Everybody reserves
17 their rights to see how it all plays out.

18 MR. WEAVER: Thank you, Your Honor.

19 MR. DALSEN: Your Honor, may I inquire?

20 THE COURT: Please proceed.

21 CROSS-EXAMINATION OF A. DERAR ISLIM

22 BY MR. DALSEN:

23 Q Good morning, Mr. Islim.

24 A Good morning.

25 Q My name is William Dalsen. I represent the ad hoc

1 group of lenders in this proceeding. I realize you've been
2 sitting in the courtroom, but before today, you and I have
3 never met or spoken; is that right?

4 A That is correct.

5 Q You are the interim CEO of Genesis Global Holdco LLC?

6 A Correct.

7 Q And Genesis Global Holdco is a debtor in this case?

8 A Correct.

9 Q Genesis Global Holdco is the parent of Genesis Global
10 Capital LLC and Genesis Asia Pacific PTE Limited, correct?

11 A That is correct.

12 Q And both of those entities are also debtors in this
13 case?

14 A Yes.

15 Q Genesis Global Holdco is the parent of Genesis Global
16 Capital International, correct?

17 A Yes.

18 Q And your current employer is Genesis Global Trading,
19 correct?

20 A Correct.

21 Q Is it fair to say that your role as interim CEO extends
22 to the various debtor and non-debtor entities that I just
23 mentioned?

24 A That is correct.

25 Q Mr. Islim, you have never served as an interim CEO of

1 another company, correct?

2 A Correct.

3 Q You've also never served as CEO of another company,
4 correct?

5 A That is correct.

6 Q Prior to this case, you've never worked on a bankruptcy
7 before, correct?

8 A Correct.

9 Q You're aware we're here today to discuss the debtors'
10 motion to approve a settlement agreement between Genesis
11 debtors and FTX, correct?

12 A Correct.

13 Q Mr. Islim, you yourself were not involved in the
14 negotiation of that settling agreement, correct?

15 A Correct.

16 Q You're aware that Genesis Global Holdco LLC has a
17 special committee for its board of directors?

18 A Yes.

19 Q That special committee is formed of two people,
20 correct?

21 A Yes.

22 Q Those two people are Tom Conheeney and Paul Aronzon; is
23 that right?

24 A Yes.

25 Q You are not member of the special committee; is that

1 right?

2 A I am not member of special committee. Correct.

3 Q And if I use the phrase special committee to talk about
4 the special committee of the board of directors, is that all
5 right?

6 A Yes.

7 Q Okay. Thank you. Also, you have never been member of
8 the special committee, correct?

9 A No.

10 Q Just because of the double negative, it's correct that
11 you've never been a member of the special committee?

12 A So the special committee has been formed with those two
13 directors you mentioned since inception and never changed
14 the formation of that committee. So I've never been part of
15 that committee, and the committee never changed since it was
16 created.

17 Q Thank you. The special committee gets to decide
18 whether Genesis enters into or agrees to a settlement with
19 FTX, correct?

20 A Correct.

21 Q You would agree that there's no one else that is also
22 part of that decision, correct?

23 A The special committee is the ultimate decision-maker
24 with all funding and settlement and governance aspects of
25 GGH. Yes.

1 Q And only the special committee gets to make those
2 decisions, right?

3 A Yes.

4 Q Mr. Islim, you believe that the proposed settlement
5 we're discussing today is reasonable, right?

6 A Yes.

7 Q Mr. Islim, you did not consider the probability of
8 success of the Genesis debtors' defenses to FTX's claims to
9 reach that conclusion, correct?

10 A That is not correct. We did consider the likelihood of
11 the outcomes of the defenses.

12 Q My question was different. You did not consider the
13 probability of success of the Genesis debtors' defenses to
14 FTX's claims to reach the conclusion that the proposed
15 settlement was reasonable, correct?

16 A That is incorrect. We did consider them.

17 MR. DALSEN: Your Honor, I'd like to read from Mr.
18 Islim's deposition transcript. This is from September 15th.

19 THE COURT: Well, the way you do that is you say
20 you gave a deposition in this case. You remember you were
21 under oath. You remember I asked questions, you gave
22 answers. Do you remember the following question? You
23 remember the following answer? So sorry, I'm just a
24 creature of habit, so I would go that way. So what exhibit
25 are we looking at?

1 MR. DOYLE: Seven.

2 THE COURT: Seven. Okay. Thank you.

3 MR. DOYLE: In the joint exhibit.

4 THE COURT: In the joint exhibit. All right.

5 Thank you.

6 MR. DALSEN: (indiscernible)

7 THE COURT: Yeah, I've got it. What page?

8 MR. DALSEN: This is at Page 58 --

9 THE COURT: Fifty-eight.

10 MR. DALSEN: (indiscernible)

11 BY MR. DALSEN:

12 Q Mr. Islim, do you recall giving a deposition in this
13 proceeding?

14 A Yes.

15 Q And you were under oath for that deposition?

16 A Yes.

17 Q You gave truthful answers during that deposition?

18 A Yes, I did.

19 Q You were made aware during your deposition that you had
20 the opportunity to review the transcript and submit any
21 corrections you believed were necessary, right?

22 A Yes.

23 Q And in fact, yesterday evening, you did submit errata
24 to your deposition transcript, correct?

25 A Yes.

1 Q And Mr. Islim, during that deposition, you were asked a
2 question: "Question: Did you analyze the probability of
3 success of Genesis's defenses?" You gave the answer, "No."

4 A Would you please guide me to the exact section seven
5 here of the (indiscernible) I don't see that position in the
6 transcript.

7 MR. DALSEN: Your Honor, I think you already
8 completed the --

9 MR. WEAVER: Objection, Your Honor. He wants to
10 look at the transcript.

11 THE COURT: Well, so it's always good everybody's
12 on the same page, both figuratively and literally. So if
13 you would turn to this black binder.

14 MR. WEAVER: Your Honor, he doesn't have that
15 binder (indiscernible) --

16 THE COURT: Oh, he doesn't have that black binder.
17 Okay.

18 MR. WEAVER: (indiscernible) their binder.

19 THE COURT: All right. Yes, you can approach the
20 witness and provide it. Thank you. All right. So Mr.
21 Islim, I believe it's tab seven, page 58, going on to page
22 59. Why don't you read those pages and then look up when
23 you've gotten a chance to do so? Thank you.

24 THE WITNESS: Thank you.

25 BY MR. DALSEN:

1 Q Okay. So I want to direct you, Mr. Islim --

2 MR. WEAVER: Objection, Your Honor. This is an
3 improper impeachment. Counsel knows his testimony was
4 clarified later on the record.

5 THE COURT: All right. Bo speaking objections.
6 He gets to present his case. You get to present yours.

7 MR. WEAVER: Fair enough, Your Honor. I'm happy
8 to reserve.

9 THE COURT: If there's context, I'm sure you'll
10 point it out.

11 MR. WEAVER: Thank you, Your Honor.

12 BY MR. DALSEN:

13 Q Mr. Islim, I'm directing you now to Exhibit 7 that's
14 been entered as a joint exhibit with this attached
15 (indiscernible) do you have the deposition in front of you,
16 the deposition transcript?.

17 A Yes, I do.

18 Q Okay. Now I want to direct you to page 58, line 19.
19 Let me know when you're there.

20 A I am there.

21 Q Mr. Islim, at your deposition, you were asked the
22 question at line 19: "Question: Did you analyze the
23 probability of success of Genesis's defenses?" And at page
24 59, line five, you gave the answer, "No," correct?

25 A Correct.

1 Q Mr. Islim, the Genesis debtors also did not consider
2 the probability of success of their defenses to FTX's claims
3 to reach the conclusion that the settlement was reasonable,
4 correct?

5 A That is incorrect.

6 Q All right. Mr. Islim, referring to the same deposition
7 transcript, I'd like to direct you to page 59, line seven.
8 Let me know when you are there.

9 A Yes, I am there.

10 Q Mr. Islim, at your deposition that we've already talked
11 about, at line seven, page 59, you were asked a question:
12 "Question: Did the Genesis debtors analyze the probability
13 of success of Genesis's defenses," and line eleven, you gave
14 the answer, "No," correct?

15 A That is correct.

16 THE COURT: So to loop back to counsel's earlier
17 objection, the idea is that your question is supposed to be
18 the same as the questions asked. So when you use different
19 words, technically the objection that was made has a point.
20 So I think your phrasing of this was different than the
21 phrasing of the question. So just to save us all time, so
22 I'll let it in. But I think that we'll get bogged down if
23 that becomes an issue going forward.

24 MR. WEAVER: And I may address it even further
25 later, Your Honor.

1 THE COURT: All right.

2 BY MR. DALSEN:

3 Q Mr. Islim, you did not consider the probability -- let
4 me ask you a different question. Mr. Islim, you never
5 discuss the probabilities or possibilities of success of the
6 FTX's claim of FTX's claims in determining whether or not
7 this is a reasonable proposed settlement, correct?

8 A That is incorrect. We did consider the likelihood.

9 Q Mr. Islim, I'd direct you again to your deposition
10 transcript, this time to page 114. Page 114, line 18,
11 please. Let me know when you're there.

12 A You said page 114?

13 Q Yes.

14 A Okay. I'm there.

15 Q At line 18, you were asked a question: "Do you also
16 consider the probability of success of those claims in
17 determining whether or not this is a reasonable proposed
18 settlement?" And at page 115, line one, you gave the
19 following answer: "Answer: As I mentioned earlier, I never
20 discussed the probabilities or possibilities of them,"
21 correct?

22 A Correct.

23 Q Mr. Islim, you're aware that FTX filed a proof of claim
24 against the Genesis debtors (indiscernible) --

25 A Yes, I am.

1 Q You're aware that part of the claim FTX asserts against
2 the Genesis debtors is for alleged repayment of a loan by
3 Alameda?

4 A Yes.

5 Q That preference claim relating to the alleged repayment
6 of an Alameda loan is for about \$1.8 billion.

7 A Correct.

8 Q Mr. Islim, you assessed the strength of the Genesis
9 debtors' defenses to that claim, correct?

10 A Yes, we did.

11 Q But you will not be telling the court today the
12 ultimate conclusion of the Genesis debtors' analysis of the
13 strength of the Alameda loan repayment claim because it was
14 served as a privileged conversation, correct?

15 A That is correct.

16 Q You will also not testify as to the specifics and the
17 details of the Genesis debtors' assessment of the strengths
18 of their defenses to the Alameda loan claim because, again,
19 you assert privilege, correct?

20 THE COURT: So I'm going to interject myself here.
21 I'm not quite sure where we're going with this. Obviously,
22 any decision that's made in a case of whether to settle or
23 not settle has certain -- is a product of lots of
24 communications and conversations, and folks decide to share
25 what they're going to share in terms of justifying it, and

1 they have a burden to meet. So I guess I'm asking a
2 question. What do you want me to take from this line of
3 questioning?

4 MR. DALSEN: Yes, Your Honor. What we want you to
5 take from this is that this is a commensurate sword and
6 shield problem, that what you have been provided as to that
7 testimony.

8 THE COURT: But isn't for every 9019 ever then,
9 right? Are people expected to throw open their books
10 completely and discuss everything? What if the settlement
11 doesn't get approved?

12 MR. DALSEN: I don't think it's that stark, Your
13 Honor, respectfully. I think that what we're saying is that
14 if you're going to offer testimony that a settlement is
15 reasonable, that leads to what are factors that are set by
16 the law. Those factors include, among other things,
17 probability of success.

18 THE COURT: But that's always, isn't it, right?
19 You always have to justify settlement.

20 MR. DALSEN: You always have to justify
21 settlement. Of course.

22 THE COURT: Right. And I would be surprised if
23 there wasn't evidence provided in this case, if there wasn't
24 a witness to testify that it was reasonable, there'd be an
25 objection that there's no witness to testify that it's

1 reasonable.

2 MR. DALSEN: And our point, Your Honor, is that
3 however much the debtors say that the settlement is
4 reasonable, the problem is that there's no backing for it.

5 THE COURT: Okay. But can't you do -- isn't that
6 irrelevant to the privilege issues? Right? Isn't that he
7 presents what he presents and then you decide whether it
8 satisfies the requirements?

9 MR. DALSEN: Your Honor, in our view, no. The
10 reason it's relevant is because it identifies for the court
11 everything that the court does not have before it because
12 this is a sword and shield issue. They can't say the
13 settlement is reasonable --

14 THE COURT: So here's what I'm going to add. I'm
15 going to ask Mr. Islim to take a walk back in the conference
16 room. You don't need to be burdened with this, and it's
17 probably a good idea that you're not. So you're still under
18 oath, but you can use that conference room back there. I
19 confess there are lots of boxes back there for lots of
20 things, including the Purdue case. So I'd ask you not to
21 look at any of those, but please make yourself comfortable.

22 So I get it. But here's the way I understand the
23 dynamic. Like any case, you're not obligated to set forth
24 everything. You say, I have a burden to meet. Here's what
25 I'm going to present. And then people can attack it and

1 say, here's where it's deficient. But I don't know the fact
2 that they didn't share everything that's privileged is
3 necessarily relevant per se. So you can attack anything he
4 says and says is insufficient and doesn't satisfy the
5 requirements for 9019. I just want to get a sense of what
6 we're doing here today so that we have productive
7 conversations. So if I'm misunderstanding it, please
8 straighten me out.

9 MR. DALSEN: Well, I think, Your Honor, what we're
10 getting at, when we're looking at the factors that you use
11 to approve 9019, you have to understand the probability of
12 success. You have to understand foreign judgment, among
13 other things. And what we're going to hear from the
14 witness, and what we heard at deposition is that when asked
15 questions, what did you consider, will you even tell us what
16 factors you considered, he's going to say it was a
17 privileged conversation. And so the evidence here, to the
18 extent that the court looks at this declaration and says,
19 well, here's a witness who's going to say this is
20 reasonable, he's going to say that a lot of people did a lot
21 of work on this, therefore you should approve it. The
22 question that we have, the questions we asked at deposition
23 were, okay, well, what did you do? What factors did you
24 consider? Did you assess the strengths? He would answer
25 yes to that question. What did you do to assess the

1 strengths? He would describe the process where he relied on
2 legal counsel. At that point, we're saying, okay, what was
3 that process? What did you actually consider? What did you
4 conclude? What was the basis for the conclusion? Because
5 otherwise the court only has a conclusory statement in the
6 declaration. But if the court wants to take that all that
7 they have is a conclusory statement in the declaration and
8 that there was not discovery permitted in these other areas,
9 then that can be what it is. But what we wanted to do is
10 make a record that these are all the things that we do not
11 know that will not be presented to the court.

12 THE COURT: All right. Well --

13 MR. WEAVER: Can I be heard, Your Honor, just
14 briefly?

15 THE COURT: Please.

16 MR. WEAVER: First of all, the comments by counsel
17 about what is or is not before you in the record, you have
18 his declaration where he goes through factors. This is his
19 testimony. They could have challenged it during the
20 deposition if they wanted to. They could have gone through
21 line by line if they wanted to. They didn't. Now the idea
22 that the witness provided no information during his
23 deposition was just proven by the very comments we just
24 heard. They asked about assessing the strengths of the
25 claims, and they said, what is your process? The witness

1 described the process. The process obviously involved legal
2 counsel, but there was a process. There are minutes in the
3 record, Your Honor, when these meetings took place. All
4 this evidence is before you. The only evidence that's not
5 before the court is the one thing they want to repeatedly
6 ask the witness, what did your lawyers tell you? And that's
7 just not appropriate in a case like this, Your Honor. The
8 declaration speaks for itself. The deposition testimony,
9 there's pages and pages and pages of describing the factors,
10 describing the process. But when you get to that ultimate
11 question, yes, he was instructed not to answer.

12 MR. DALSEN: Your Honor --

13 THE COURT: So when you say when it gets to the
14 ultimate question, and are you saying the question is, what
15 did counsel tell you?

16 MR. WEAVER: The question is, what were your
17 conclusions as to the strength of the claims? What were
18 your conclusions (indiscernible) --

19 THE COURT: Well, if he's the witness, I don't
20 tell you who to present as a witness.

21 MR. WEAVER: Correct.

22 THE COURT: He's got to have evidence on the
23 relevant test and he's got to be able to speak to it. Maybe
24 it's a burden issue in terms of whether you've met your
25 burden and you say, well, we think we have, and he thinks

1 you haven't. But he's got to have -- it would be unusual if
2 he didn't have an opinion on certain things. But again,
3 we'll go through it. My brief look at the lines after the
4 question on page 58 is that some of this is not so clear.
5 And I'm trying to avoid the situation where you get all
6 these categorical statements and then he introduces all the
7 statements that say, well, here's what I did, and there are
8 two ships passing in the night. I mean, I guess we can do
9 that. But if that's the case, then the parties' estimate of
10 two hours is going to be woefully underestimated as to how
11 long it's going to take.

12 But again, you know the case better than I do, so
13 I just wanted to get a sense of where we are. And I think
14 I've gotten that. And so I think we can call Mr. Islim out
15 and we'll see where we end up.

16 MR. WEAVER: Thank you, Your Honor.

17 THE COURT: Thank you, Mr. Islim. If you would,
18 again, make yourself comfortable.

19 THE WITNESS: Thank you, Your Honor.

20 THE COURT: And I just remind you, you're still
21 under oath. And thank you for your patience as we talk
22 through some issues which may or may not result in a
23 shortened hearing. But we'll see. Counsel, you're up.

24 MR. DALSEN: Thank you, Your Honor.

25 BY MR. DALSEN:

1 Q Mr. Islim, forgive me if I'm asking you the same
2 questions a second time. Let me make sure I didn't lose my
3 place.

4 THE COURT: I think we had gone through 58 and 59
5 and 114 and 115, and then you talked about Alameda.

6 MR. DALSEN: Thank you, Your Honor.

7 BY MR. DALSEN:

8 Q Mr. Islim, just to be clear about this. You will not
9 testify as to specifics and details (indiscernible) Genesis
10 did its assessment of strengths of the defenses to the
11 Alameda loan claim because you assert privilege, correct?

12 A Correct.

13 Q It is your position, sir, that the settlement agreement
14 we're discussing today will avoid the possibility of rulings
15 in either these bankruptcy proceedings or in the FTX
16 bankruptcy proceedings that can negatively impact the
17 Genesis debtors' defenses to claims, right?

18 A Would you please question or break it down, if you
19 don't mind?

20 Q Of course. I'm asking whether it's your view that the
21 settlement agreement we're talking about today, that
22 entering into it would avoid the possibility of rulings in
23 this proceeding. Let's start with that. This proceeding
24 that could negatively impact the Genesis debtors' defenses
25 to claims.

1 A That is correct.

2 Q And similarly, it is also your view that the settlement
3 agreement we're talking about today will avoid the
4 possibility of rulings in the FTX bankruptcy proceedings
5 that could negatively impact the Genesis debtors' defenses
6 to claims, correct?

7 A That is correct.

8 Q You made that statement in your declaration, right?

9 A Yes.

10 Q And you made that statement in your declaration --
11 actually, let me be specific. Do you have your declaration
12 in front of you, Mr. Islim?

13 A I do.

14 Q Could you turn to page five of your declaration,
15 paragraph 12, please. I'm going to direct you to the second
16 sentence of paragraph 12.

17 A In paragraph 12?

18 Q Yes.

19 A Okay.

20 Q And that sentence reads, "The settlement agreement will
21 also avoid the possibility of liens in either of the Genesis
22 bankruptcy proceedings or the FTX bankruptcy proceedings
23 that could negatively impact the Genesis debtors' defenses
24 to claims or claims (indiscernible) may assert against third
25 parties." That's what you wrote in paragraph 12.

1 A Correct.

2 Q And that's true today as well, correct?

3 A (indiscernible)

4 Q That's still a correct statement today?

5 A Yes.

6 Q Now to make that statement in your declaration, you had
7 to assess a lot of factors with relationship to the claims,
8 counterclaims and settlement as a whole, correct?

9 A That is correct.

10 Q But today we will not be telling the court whether you
11 assessed the defenses the Genesis debtors had to FTX's
12 claims because it asserted privilege, right?

13 A That is incorrect. We did assess the likelihood, the
14 outcome of those (indiscernible) factors. We did.

15 Q Mr. Islim, I want to direct you again your deposition
16 transcript. You still have that in front of you?

17 A Yes, it is.

18 Q I'd like to direct you to page 94, please. And if you
19 go to line 13, Mr. Islim, at your deposition you were asked
20 the question, "Did you assess the defenses?" The answer you
21 gave is at line 17, "Yeah, I wish not to answer this one,
22 but in general, we discussed all the factors, including the
23 defense." Is that the testimony you gave?

24 A The answer in this, what's written here is correct, but
25 the context might be different. So I'm happy to elaborate

1 further if you wish.

2 Q Mr. Islim, you relied on Genesis debtors' restructuring
3 experts, including legal counsel, to say what you said in
4 paragraph 12 of your declaration, right?

5 A I relied on the restructuring expert, but also those
6 are my statements. So I'm fully convinced and in agreement
7 with all of that..

8 Q And the restructuring experts that you refer to, that
9 includes legal counsel --

10 A It's (indiscernible) our financial advisors who
11 analyzed the FTX transaction.

12 Q And you would agree that you are the most familiar and
13 capable person at the Genesis debtors to have submitted the
14 declaration you submitted in support of the motion we're
15 talking about today, right?

16 A Can you repeat your question? Sorry.

17 Q Sure. You would agree that you are the most familiar
18 and capable person at the Genesis debtors to have submitted
19 the declaration that you submitted in support --

20 A From the business side, yes.

21 Q From the business side.

22 A Yes.

23 Q But you also agree that you do not have the knowledge
24 or the specifics of the claims FTX has asserted against the
25 Genesis debtors, correct?

1 A I was briefed on the analysis and we assessed all the
2 defenses and the likelihoods and such. But what I mean by
3 that is there are a lot of technical and legal details that
4 is not my area of expertise. It's a complex exercise, so
5 I'm not knowledgeable with all the areas that we had to
6 navigate to come up to that (indiscernible) --

7 Q Mr. Islim, you do not have knowledge of the specifics
8 of the claims certified against the Genesis debtors,
9 correct?

10 A I do. I do, but not all of them.

11 Q Okay. Well, let's look at your deposition transcript
12 again. If you could go to page 101, please.

13 A Yes.

14 Q At line three, you were asked the question, "But you
15 also mentioned that you do not have the knowledge of the
16 specifics of the claims," and you gave the answer, "That is
17 correct." Is that your testimony?

18 A Yes, it is.

19 Q Mr. Islim, you are also aware that as part of FTX's
20 proof of claim against the Genesis debtors, part of it
21 concerns alleged collateral posted or returned to Genesis
22 Global Capital by Alameda; is that right?

23 A Yes.

24 Q And the Genesis debtors did assess the strength of
25 those collateral claims, correct?

1 A Correct.

2 Q But as with the prior claims, you will not be telling
3 the court today what the Genesis debtors did to assess the
4 strength of their defenses because you assert privilege,
5 correct?

6 A We did assess the defenses. And as I mentioned in my
7 deposition, we looked at different factors that went into
8 that. But what I meant by that is I cannot comment on the
9 final details when it comes to all the legal aspects of
10 those defenses and the different legal details that go into
11 that.

12 Q So, for example, Mr. Islim, you cannot comment as to
13 the factors that you discussed in order to make that
14 assessment, correct, because of privilege?

15 A I can -- I can comment on that. I can mention some of
16 the factors, but not the substance and the finer details of
17 that. I'm happy to elaborate if you wish.

18 Q When you say not the substance or finer details, what
19 do you mean?

20 A For example, we looked at the claims. We looked at the
21 magnitude of those claims. We looked at the likelihood of
22 defenses of those claims. We looked at factors that emerge
23 on the back of the administrative complexities of the two
24 bankruptcies. We looked at also potential claims that
25 Genesis asserted against third parties and similar claims

1 asserted by other parties against Genesis. So we looked at
2 the factors. My understanding is, when you ask about the
3 specific is what was the conclusion of those factors, how do
4 we analyze it in final details? This is what I'm not privy
5 to, but definitely we assessed all the factors when it comes
6 to those claims and the nature of them. But I cannot
7 comment on the specifics of the analysis of each of those
8 claims and what our final conclusion on those because this
9 is privileged communication.

10 Q Okay. So Mr. Islim, you're not telling us the
11 conclusion that the Genesis debtors reached because you're
12 asserting privilege, correct?

13 A We communicated the conclusion. The conclusion is we
14 found a global settlement and it's fair and robust and
15 brings a lot of value to our creditors. But I mentioned
16 earlier here means you cannot look at -- it's not very
17 valuable to communicate the individual outcome of each
18 defense and each factor. You have to look at it globally,
19 consider all factors and all defenses and everything I
20 mentioned earlier, and then you make a conclusion. So no,
21 the conclusion is public. We reached settlement with FTX.
22 We communicated that and we continue to (indiscernible)
23 robust settlement (indiscernible) privileged.

24 Q My question was different. Mr. Islim, you will not be
25 sharing the conclusions and the analysis or anything more

1 specific than the fact that you reached a settlement with
2 FTX with the court today because you're asserting privilege,
3 correct?

4 A No. What I mentioned, we shared the factors. We did
5 the comprehensive analysis that is needed. But that is
6 correct, I do not wish to share further details about how we
7 analyzed and what was the conclusion of each of those
8 dimensions because this is privileged information.

9 Q Okay. So you will not be sharing how you analyzed each
10 of the factors that you say that were considered because of
11 privilege, correct?

12 A Correct.

13 Q You will not be sharing the conclusion as to each of
14 the factors because of privilege, correct?

15 A Correct.

16 Q You will not be sharing any conclusions about the
17 strength of the Genesis debtors' claims because of
18 privilege.

19 A I share that we assessed them, but I do not want to
20 share -- I do not wish to share the result of those
21 assessments. Correct.

22 Q You will not be sharing with the court information and
23 conclusions about any weaknesses of the Genesis debtors'
24 claims or defenses, again, because of privilege.

25 A I think the court -- it's important to know that we

1 assessed the likelihood and the outcome, and we
2 (indiscernible) all the factors. But I do not -- again, I
3 cannot comment on the specifics and the internal discussions
4 and the outcome of those individual factors. That is
5 correct.

6 Q So the answer to my question was yes.

7 A It's a bit of a generic question. I keep repeating
8 that we discussed the factors and the likelihood, and it's a
9 global settlement. It's one number that considers multiple
10 factors, multiple dimensions. What matters at the end is
11 that we considered the factors and we assessed them, and we
12 reached that global resolution considering the strength and
13 the weaknesses of all those things.

14 Q Beyond what you just said, is there anything more that
15 you're going to share with the court today about the
16 analysis that you're talking about?

17 A Well, what I can share with the court is the analysis
18 is very comprehensive. We worked for months and weeks
19 extensively with our restructuring and bankruptcy experts to
20 look into those factors. I hope everyone appreciates that
21 those are extremely technical details that requires people
22 who are very knowledgeable with the space and add into that
23 the complexity of the two bankruptcies at once. But also,
24 we have a very seasoned special committee who has tens of
25 years of experience actually in restructuring and in capital

1 markets. And I believe putting all that together, we did
2 our best efforts to finalize this global resolution.

3 Q Mr. Islim, you're also aware that part of FTX's claim
4 against the Genesis debtors concerns withdrawals from the
5 ftx.com exchange by Genesis Global Capital; is that right?

6 A By Genesis Global Capital International. Maybe if you
7 might repeat that question.

8 Q Sure. I'll just ask you. There's a claim that FTX has
9 asserted that concerns withdrawals from the ftx.com
10 exchange. Are you aware of that claim?

11 A Yes.

12 Q And does that concern withdrawals from the FTX exchange
13 by Genesis Global Capital International?

14 A That is correct.

15 Q And FTX seeks approximately \$1.6 billion related to
16 those claims?

17 A That is correct.

18 Q The Genesis debtors assessed the strength of the FTX
19 claim, the withdrawal claim; is that right?

20 A Yes.

21 Q And the process, you've already described the process
22 that the Genesis debtors followed to assess the strength of
23 claim; is that right?

24 A Yes.

25 Q But you did not assess or rely on others to assess the

1 probability of success of FTX's withdrawal claims, correct?

2 A That is incorrect.

3 Q All right. Mr. Islim, let's look at your deposition
4 transcript again. Let's look at page 125, please. I would
5 direct you to line five, please. Mr. Islim, you were asked
6 at your deposition the question: "Did you assess or rely on
7 others to assess the probability of success of FTX's
8 withdrawal claims?" At line ten, you gave the answer: "We
9 did not consider the probabilities." That was a testimony,
10 correct?

11 A Correct.

12 Q Mr. Islim, the Genesis debtors also did not consider or
13 assess the probability of success of FTX's withdrawal
14 claims, correct?

15 A Correct.

16 Q And as such, you will not tell the court today whether
17 the Genesis debtors concluded that the withdrawal claims
18 from FTX would be successful because you assert privilege,
19 correct?

20 A We assessed the withdrawals strength and weaknesses and
21 we communicated also our position with the FTX UCC and we
22 explained that extensively. So basically we understand
23 those weaknesses and strengths and we analyzed them
24 extensively with M3 and Cleary and also we communicated with
25 FTX UCC our position on those claims.

1 Q Mr. Islim, let me ask you a different question. You
2 did not know whether the withdrawal claims from FTX would be
3 successful if brought against Genesis, correct?

4 A It's very -- this is uncertain. It's just a claim.
5 The certainty comes, I believe, after -- it could take years
6 between estimation and mitigation and concluding the
7 bankruptcy exercises in the two courts. So it's an
8 uncertain outcome, but we analyzed all of that. We analyzed
9 the likelihood. We analyzed the strength and weaknesses.
10 But no matter what, it continues to be uncertain.

11 Q Mr. Islim, I'd again point you to your deposition
12 transcript, this time page 123, line 16, please. Are you
13 there, sir?

14 A Sixteen?

15 Q Yes, page 123, line 16.

16 A Okay. So this question -- so my question is you did
17 not know whether the withdrawal claims from FTX would be
18 successful against Genesis. Objection. And I would like to
19 instruct the witness not to answer. You want me to read my
20 answer?

21 Q Well, the answer, if we look on page 124 at line one,
22 the answer you gave is, "I'm not answering this question,"
23 correct?

24 A That is --

25 MR. WEAVER: Objection, Your Honor. This is not -

1 - this is not impeachment. We're looking at different lines
2 of the transcript. We're jumping around.

3 THE COURT: So I don't think the question you
4 asked lines up with this testimony, but I got it.

5 MR. WEAVER: Sorry. I'm sorry. I apologize, Your
6 Honor.

7 THE COURT: It's fine. I think I understand your
8 point and I get it. And this is -- so next question.

9 BY MR. DALSEN:

10 Q Mr. Islim, you also will not tell the court today the
11 many factors Genesis debtors considered to evaluate the
12 withdrawal claim because of a privilege, correct?

13 A As I mentioned earlier, I just communicated the factors
14 with the court earlier when I discussed about we analyzed
15 the claim and the magnitude of those claims, the cost of
16 litigation and time and all of that. So I'm happy to show
17 you the --

18 Q Mr. Islim, my question is different, but let me just
19 again point you to your deposition transcript, page 125,
20 line 13. At your deposition mistress and you were asked a
21 question: "Question: Did the Genesis debtors consider or
22 assess the probability of success of the withdrawal claims?"
23 "Answer: We did not consider the probabilities." Question
24 at line 18, "What did you do to evaluate this claim?"
25 Answer at line 21, "The same was a very complex exercise.

1 We were presented with many factors which I cannot discuss
2 now due to privilege and we made that determination based on
3 all those factors." That was your testimony, correct?

4 A That is correct.

5 Q Mr. Islim, you agree that legal counsel to the Genesis
6 debtors led to negotiation the settlement agreement
7 discussed today?

8 A It did.

9 Q You also agree that legal counsel for Genesis debtors
10 helps the Genesis debtors make determination of whether the
11 settlement is reasonable.

12 A They provide special committee and senior management
13 with analysis and provide us with the expertise needed for
14 the special committee to make a final decision.

15 Q The legal counsel helped Genesis debtors make that
16 determination, right?

17 A Yes.

18 Q But you will not be telling the court today why you
19 believe the proposed settlement is reasonable as you
20 understand it because a lot of the input into that decision
21 is privileged information. You will not be telling the
22 court today why you believe the proposed settlement is
23 reasonable as you understand it because a lot of the input
24 that went into that decision is privileged information,
25 right?

1 A Well, I'm happy, I mean to share with -- no, I mean the
2 settlement is reasonable and as you are aware, the potential
3 cost and timing of litigation and destination is extremely
4 uncertain and very expensive and our creditors are looking
5 for certain. So this plan allows us to proceed with our
6 plan and allows us also to provide liquidity for our
7 creditors in a timely manner. Litigating this between two
8 very large or the largest two crypto bankruptcies will be
9 very costly and unfavorable for our creditors.

10 Q Mr. Islim, you would agree that a lot of the input,
11 fortunately, that the Genesis debtors received is privileged
12 information?

13 A Well, it depends on the context. But a lot of the
14 input meaning when special committee wants to make decision,
15 the input to their decision is the likelihood and the
16 estimation and our privileged information about how we view
17 those claims success and failures. This is what I mean by
18 the input. But again, those questions are very pigmental
19 because they are asked in different times and different
20 contexts. But we consider the input that our expert
21 provided, our legal analysis about the successes and initial
22 failures of those claims and we consider those very
23 seriously. And that was a major input of the global
24 settlement. And I cannot comment on that input in the
25 context that I cannot tell you what really told us about and

1 what the success of that claim of area is because it doesn't
2 matter. What matters is global settlement. They know all
3 the factors and that special community measurement received
4 that input and that input is cryptocurrency. Correct.

5 Q Okay. So the answer to my question, a lot of the input
6 went into reasonable as you understand it, a lot of that
7 input is privileged.

8 A Absolutely.

9 Q You will not be disclosing that privilege information
10 to the court today, right?

11 A No.

12 Q Mr. Islim, I'd like to show you -- but you have one too
13 many binders up there.

14 MR. DALSEN: If I just may have a moment.

15 THE COURT: Sure (indiscernible) it is, but it's a
16 white binder from that nice gentleman over there.

17 THE WITNESS: Is it the other one?

18 MR. DALSEN: All right. It's just like a tab.
19 Ten of the white binder. Unless you have a black binder
20 there.

21 THE COURT: They're both white. There's one
22 binder that has nine tabs. Do you happen to have that one
23 in front of you? They're both white.

24 THE WITNESS: I have 15 and 15.

25 MR. DALSEN: (indiscernible) net binder there? If

1 you turn a tab down.

2 THE COURT: All right. So I'm in my white binder.

3 BY MR. DALSEN:

4 Q Now, Mr. Islim, this one, can you tell us what is that
5 type of tab ten of --

6 A This is a presentation prepared by (indiscernible) to
7 present to the FTX UCC and their legal counsel.

8 Q If you look at the bottom right corner, should be a
9 control number down there. Genesis. Do you see that?

10 A I do.

11 Q Okay, from the last couple of numbers there, 9632. You
12 see that?

13 A I do.

14 Q Mr. Islim, you are not in a position to approve this
15 presentation on behalf of the debtors, right?

16 A That is correct.

17 Q You also do not have any input into this presentation.

18 A This is Brooklyn. Potentially, I did. It's hard,
19 remember, this is month of exercise. It's hard to pinpoint
20 link the details to my conversations over the months, but
21 potentially, maybe.

22 Q Do you recall having any direct input on this
23 presentation?

24 A No. No direct input.

25 Q Mr. Islim, you will not tell us today whether you agree

1 with this presentation and what it contains because it's
2 their privilege, correct?

3 A That is incorrect.

4 Q Okay, let's look at your deposition transcript. I'm
5 sorry to make you shuffle these binders again. Look at page
6 74.

7 A It's it 70. Correct, sir?

8 A Yes, I'm there.

9 Q Okay, I want to direct your attention to one at your
10 deposition that you gave in this proceeding. You asked a
11 question: "Question: Do you agree with the presentation and
12 what it contains at line ten?" You gave the answer, "I have
13 nothing to comment on."

14 A (indiscernible)

15 MR. WEAVER: -- reads right over the objection,
16 which was an important part before the witness answered the
17 question.

18 THE COURT: Well, read the whole transcript. Just
19 because that's what the record is, because the deposition is
20 not going in.

21 MR. DALSEN: Okay. That's fine, Your Honor.

22 BY MR. DALSEN:

23 Q Mr. Islim, I'll just read from page 74, line 510. I'm
24 going to ask you the question and answer your case question
25 at line five. You agree with this presentation of what it

1 contains at line seven? Your counselor objects. She says,
2 objection, and I caution the witness not to reveal any
3 privileged information. Your answer at line ten. I have
4 nothing to comment on that. Was that the answer that you
5 gave your deposition?

6 A Yes.

7 Q The reason you didn't comment is because of what your
8 counsel cautioned you not to reveal privileged information,
9 correct?

10 A Not necessarily. Because the question was, do you
11 agree with the presentation and what it contains. And
12 remember, this is presentation authorized by the special
13 committee created by and of course, after consulting with
14 all the restructuring advisors and presented to was not -- I
15 didn't have direct input to it. It was part of ongoing
16 negotiations at one point in time. And it's very generic
17 for me to say I agree or disagree because we are here now.
18 And that was a point of time when it comes to the details
19 and the defenses and the legal analysis. And lastly, it was
20 a very difficult presentation between lawyers. So, out of
21 caution, I didn't comment.

22 Q At your deposition, you had no comment whether you
23 agreed this presentation as content, correct?

24 A Yes.

25 Q Okay. In fact, we're not going to tell the court even

1 a yes or no answer, at least the deposition. You did not as
2 to whether you disagreed with something in this document
3 because you understood privilege, right?

4 A Yes. The details of that is privilege. And that's
5 what we need to understand, that that was part of ongoing
6 negotiation authorized by the special committee were the
7 ultimate decision maker with that. But absolutely, we were
8 briefed on it and special committee authorized.

9 Q Mr. Islim, my question is very specific. You will not
10 tell the court yes or no --

11 THE COURT: I got it. It's in the deposition that
12 you read. And that was his testimony. I got it. Next
13 question.

14 BY MR. DALSEN:

15 Q Mr. Islim, the same presentation we've been looking at,
16 this was a presentation. I believe you're testified to this
17 presentation to the FTX debtors, the FTX UCC and their
18 respective legal advisors. Is that right? And this is
19 their respective legal advisors?

20 A Yes.

21 Q I want you to turn to the second to last page of this
22 presentation, number ending 9642. Let me know when you're
23 there's.

24 A Okay.

25 Q I want to direct you to the third bullet point on that

1 page. Actually, I'm sorry, I should have been more
2 specific. So under the rationale for settlement okay. I'd
3 like to direct you to the third bullet point underneath
4 that, provide value. Do you see that?

5 A I do.

6 Q Genesis debtors told FTX the settlement we're talking
7 about today provides value to FTX debtors, even though
8 Genesis debtors believe they had valid defenses and would
9 succeed in reducing the FTX debtors claims to zero. That's
10 what he told the FTX debtors, right?

11 A That is correct.

12 Q The Genesis debtors also told the FTX debtors that the
13 settlement eliminates substantial legal costs and
14 distractions, right?

15 A That is correct for both of us, not just for them.

16 Q Where on page 9642, that last bullet point, does it say
17 that it eliminates substantial legal costs and distractions?

18 A No, what I'm saying is what you mentioned is correct,
19 but I'm just adding that it's beneficial for both.

20 Q Okay, so it's not a presentation, but your testimony is
21 that it would be beneficial for both. From that
22 perspective.

23 A It's common sense when you reach a settlement, it's
24 beneficial for both parties.

25 Q Absolutely. But the Genesis debtors did not present

1 any information actually, let's just start with you. You
2 yourself not present any information as part of this
3 presentation that we're looking at about how the Genesis
4 debtors have their own benefits and settlements.

5 A Correct. Again, when it comes to the -- there are
6 different stakeholders involved in the process we were
7 conducting along the way. So from senior management
8 perspective, our main involvement has been providing the
9 experts with the records, with the context, with the
10 transactions, with the history between the entities and
11 provide them with all that basically data and history for
12 them to be able to make those assessments. If you add to
13 that that both FTX and Genesis filed for bankruptcy, it's
14 not my expertise to provide input around specific benefits
15 of settlement. Beyond that, it's a cost saving. It's
16 bringing more timely resolution for our bankruptcy case and
17 helping our creditors basically access their liquid assets
18 faster and sooner. So from my perspective, absolutely, I
19 had to give an input. And as a fiduciary, my responsibility
20 is actually to maximize recovery and accelerate it and help
21 our creditors recover their money as soon as possible. So
22 of course, I was engaged and involved in certain areas and
23 make assessment there. But beyond that, it requires the
24 experts who provide that input and provide us basically the
25 global and all factors that Genesis for reaching that I'm

1 going to.

2 MR. DALSEN: Move to strike that answer is not
3 responsive. I don't want to have to do that every time.
4 But note that for the record, Mr. Islim, this one, my
5 question was quite different.

6 THE COURT: I understand it talks about the
7 benefits to the FTX debtors. It's a presentation to FTX.
8 Next question.

9 MR. DALSEN: My question, if I may, Your Honor.

10 THE COURT: Your question was so it doesn't
11 describe this presentation doesn't describe the genus
12 debtors own benefits of settlement. I can see the document.
13 It doesn't again, it's a presentation to FTX. I'm not sure
14 of the probative value of that question in the context of a
15 presentation to FTX. Next question.

16 BY MR. DALSEN:

17 Q Mr. Islim, the special committee generally relied on
18 analysis by counsel to decide whether to approve the
19 settlement, right?

20 A Yes.

21 Q Process that you follow to assess the strength let me
22 ask you a question specific to the withdrawal. Do you have
23 that in mind? The process that the Genesis debtors follow
24 to assess the strength of the withdrawal fight was rely on
25 legal counsel Cleary Gottlieb, who worked with financial

1 advisors, to assess the strength of the Genesis debtors,
2 right?

3 A Yes.

4 Q And you use that same process to assess all the FTX
5 claims, right?

6 A In general, yes.

7 Q New topic. Genesis debtors have their own claims
8 against the FTX debtors, right?

9 A That is correct.

10 Q One of those claims, approximately \$38 million claim
11 that GGC has against Alameda relating to loan principal,
12 correct?

13 A Yes.

14 Q Second claim is \$140 million claim GGC has against
15 Alameda relating to the 90-day preference period. A third
16 claim is a \$176 million claim that GGCI has against FTX,
17 your deposits on the FTX. So we're talking about roughly
18 \$355 million of claims that the Genesis debtors have against
19 FTX, correct?

20 A At this grant?

21 Q I'm sorry?

22 A Yes. Correct.

23 Q The Genesis debtors believe that those claims, claims
24 they have FTX have significant value, right?

25 A Yes.

1 Q And the Genesis debtors have assessed the strength of
2 their claims as FTX, right?

3 A Yes.

4 Q But as with the FTX claims against Genesis, you will
5 not tell the court today what you concluded about the
6 strength of Genesis that is claimed because of the cert
7 privilege, right?

8 A That is correct.

9 Q You will not tell the court today whether the Genesis
10 debtors determined that their claims were strong or weak
11 because this is correct.

12 A That is correct.

13 Q You're aware, Mr. Islim, that FTX itself asserted that
14 it owes GGCI of Genesis Global Capital International \$227
15 million bankruptcy filings?

16 A Correct. Yes. Correct.

17 Q You will not be telling the court today whether the
18 Genesis debtors had any reason to dispute FTX's assertion
19 because of privilege, correct?

20 A That is correct.

21 Q You also will not tell the court about the specifics,
22 the composition or the validity of the customer deposit
23 claim of about \$226 or \$227 million because you assert
24 privilege over that analysis, right?

25 A That is correct.

1 Q I want to ask you about the preference claim. Do you
2 have that in mind, the \$140 million?

3 A Yes.

4 Q For that \$140 million claim, you also will not tell the
5 court today whether you know FTX has any defenses to that
6 claim because you assert privilege, correct?

7 A You mean Genesis or FTX?

8 Q Whether Genesis has any -- or I'm sorry, whether FTX --
9 whether the Genesis debtors have concluded that FTX has
10 defenses to its claim because you assert privilege.

11 A Yes. Again, all the analysis is the same thing, all
12 the analysis that comes to those claims, I can't share the
13 details of that with the court because of privilege.

14 Q Okay, and you will not tell the court today even the
15 extent of your involvement in the process assessing that
16 claim because of privilege, correct?

17 A Well, again, I can share as a management, our main role
18 has been to provide the records and the history and the
19 transactions and the context and everything needed for the
20 Cleary Gottlieb and (indiscernible) to make the assessments
21 and the likelihoods and initial outcome. But you understand
22 those are very technical matters. As an interim CEO, I
23 cannot -- number one, from (indiscernible) perspective and
24 also from (indiscernible) perspective to comment on those
25 findings.

1 Q Mr. Islim, let's look at your deposition transcript
2 again, please. This is page 184. I'm going to direct you
3 to page 184, line five. Please let me know when you're
4 there.

5 A I am there.

6 Q All right. Mr. Islim, at your deposition, you were
7 asked the question: "What was the extent of your involvement
8 in the process of assessing the strengths of the Genesis
9 claims?" Your lawyer objected and, at line nine, you gave
10 the answer: "This calls for privilege." That was your
11 testimony, correct?

12 A Yes. But in the context, the question here is
13 assessing the strength of the Genesis claim. What I
14 answered you earlier was what was my role in general. My
15 role in general was providing records and providing the
16 history of the transactions. Here the question says
17 assessing the strength of the Genesis claims. Again, this
18 is privileged information.

19 THE COURT: Counsel, I think this is his testimony
20 both here today and in the depositions. It's consistent if
21 you look at line five through line 18 or line 20.

22 MR. DALSEN: I respectfully disagree, Your Honor.
23 But I will move on to the next question.

24 THE COURT: So what did I miss?

25 MR. DALSEN: Just that we asked him previously the

1 extent of his involvement --

2 THE COURT: Right.

3 MR. DALSEN: -- and (indiscernible) asserting
4 privilege.

5 THE COURT: No. And then he said my involvement
6 in the process, can you share what we did to share
7 information so that Cleary Gottlieb and 3M can make
8 assessment. So, I mean, there's slightly different parsing
9 of the language in lines 14 through 18, but I don't think
10 it's inconsistent.

11 MR. DALSEN: Why don't I move on to the next
12 question, Your Honor?

13 THE COURT: Yeah.

14 BY MR. DALSEN:

15 Q Mr. Islim, you do not recall discussing probabilities
16 of success in any numerical sense relating to this \$140
17 million claim, correct?

18 A That is correct.

19 Q And you will not tell the court today what conclusion
20 you reached about the probability of success or potential
21 outcome of the Genesis debtors' \$140 million avoidance claim
22 because you assert privilege, right?

23 A We discussed the likelihood. We did not discuss the
24 new record numbers. And again, the final assessment is
25 privileged. Correct.

1 Q You're not going to testify about the probability of
2 success of the potential outcome of the avoidance claims,
3 correct, because of privilege?

4 A The likelihood and the outcome and our final
5 assessments (indiscernible) are privileged. Correct.

6 Q Okay. I want to ask you about the \$40 million loan
7 balance claim. That \$40 million claim relates to a loan
8 that Alameda did not repay; is that right?

9 A Correct.

10 Q As with the other claims, you asked the debtors to
11 assess the strength of that claim, correct?

12 A Yes.

13 Q You're not going to tell the court what you concluded
14 about the strength of the claim because of privilege, as
15 with the other claims; is that correct?

16 A Correct.

17 Q You will not tell the court what you concluded
18 (indiscernible) --

19 MR. DALSEN: May I just have one moment, Your
20 Honor, to consult with my client?

21 THE COURT: Sure.

22 THE WITNESS: Your Honor, may I get my water from
23 the --

24 THE COURT: Yes. If somebody would give the
25 witness his water so you can --

1 THE WITNESS: Thank you.

2 THE COURT: Sure. Thank you, Counsel. Having
3 been a witness, it's no fun being a witness for anyone. But
4 at least we won't have you die on the vine without your
5 water. So it's the least we can do. Counsel?

6 MR. DALSEN: Your Honor, we'll pass the witness.

7 THE COURT: All right.

8 MR. DALSEN: (indiscernible)

9 THE COURT: Thank you.

10 MR. WEAVER: Just one moment, Your Honor.

11 THE COURT: Sure. So if you need five minutes
12 just to figure out what you want to do or if you think a
13 minute or two will be --

14 MR. WEAVER: I think -- I think I'm actually ready
15 now, Your Honor.

16 THE COURT: All right.

17 MR. DALSEN: Your Honor, I appreciate a little bit
18 of the guidance on some of the comments you made about the
19 deposition testimony. Since the witness is here obviously
20 and testifying live, I do not intend to go through with the
21 witness all the places in his testimony that I think provide
22 more context to the excerpts.

23 THE COURT: Well, that's a tough question for me
24 in the sense of we have a witness, so I don't accept the
25 deposition because then I'm always concerned about the sort

1 of hidden evidence problem. And so to the extent that he's
2 identified certain questions and there's context, I would
3 just have you go through it. I recognize that takes more
4 time. If you all want a minute, maybe there's a stipulation
5 of some sort that you can work out. But if you've reached
6 this point, I doubt it. So I would just be inclined to just
7 go through it.

8 MR. DALSEN: Understood, Your Honor. Also --

9 THE COURT: That's why I was just trying to get in
10 front of that issue earlier. But I don't want to trample on
11 people's ability to present their case.

12 MR. WEAVER: Understood, Your Honor. Well, why
13 don't we just see if we get testimony from the witness on
14 redirect and perhaps that will satisfy my concerns.

15 THE COURT: All right.

16 REDIRECT EXAMINATION OF A. DERAR ISLIM

17 BY MR. WEAVER:

18 Q Good morning, Mr. Islim, again. Good to see you.

19 A Thank you.

20 Q Mr. Islim, you were asked a lot of questions on cross-
21 examination about probabilities. Do you recall those
22 questions?

23 A Yes, I do.

24 Q And you were shown a lot of deposition testimony about
25 you answering no to questions about considering

1 probabilities. Do you recall those questions?

2 A Yes, I do.

3 Q At your deposition, when you said you and the special
4 committee did not consider the probabilities of success,
5 what did you understand the word probabilities to mean?

6 MR. DALSEN: Objection, Your Honor. There was no
7 objection to the question at the time of deposition that
8 there was something unclear about it.

9 THE COURT: You can recross him on it. I'm -- he
10 -- you --

11 MR. DALSEN: Understood, Your Honor.

12 THE COURT: Overruled. Would you repeat the
13 question?

14 MR. WEAVER: Certainly, Your Honor.

15 BY MR. WEAVER:

16 Q Mr. Islim, at your deposition, when you testified that
17 the senior management and special committee did not consider
18 probabilities of success, what did you understand the word
19 probabilities to mean when answering those questions?

20 A Probabilities, by definition, are actual numbers,
21 numerical numbers. So I assumed the question was, did you
22 assign 50, 60 percent, 70 percent, which we did not.

23 Q And did you make that clarification at your deposition,
24 Mr. Islim?

25 A Yes, I did.

1 Q Okay, and I don't want to do this too often, but if you
2 could look at your deposition transcript, Mr. Islim, at page
3 242.

4 A Yes, I'm there.

5 Q I'm going to begin on line seven, if you'll just read
6 along with me. "Question: Mr. Islim, earlier you were asked
7 about the FTX claim," --

8 THE COURT: Well, if you're asking these questions
9 here, just ask him those questions from the podium.

10 MR. WEAVER: That's fine, Your Honor. I was
11 confused a little bit about the issue with the transcript
12 and --

13 THE COURT: Well, again, sorry, I'm an old trial
14 lawyer. So when we have a live witness, we don't use
15 depositions except to impeach a witness. And so since he's
16 here to offer testimony, he's here to offer testimony. So I
17 realize that there are times when that seems like an unwise
18 rule because we could just throw everything in from the
19 deposition. But since we have the witness here, that's what
20 it's designed to do.

21 MR. WEAVER: Your Honor, that is our preference.
22 We did not want to go line by line, and I apologize for my
23 confusion earlier.

24 THE COURT: No, no, no. That wasn't -- all judges
25 don't handle this stuff the same, and that's particularly

1 true in bankruptcy court where it's a bench trial. So there
2 are certain times that the rules of evidence are a little
3 less vigorously enforced and everybody has their own way of
4 doing it. So all questions on both sides about that are
5 fair game.

6 MR. WEAVER: Thank you, Your Honor.

7 THE COURT: And I'm happy to answer any of those
8 questions so that we can do it efficiently.

9 MR. WEAVER: Thank you, Your Honor.

10 BY MR. WEAVER:

11 Q Mr. Islim, just to be clear, did the special committee
12 and the senior management consider probability of success
13 when evaluating the settlement?

14 A Yes, we did.

15 Q Now you were also asked questions today, Mr. Islim,
16 about the ftx.com withdrawal claims. Do you recall those
17 questions?

18 A Yes.

19 Q And there was a discussion about whether or not it was
20 GGCI or GGC. Do you recall that?

21 A Yes.

22 Q What is the issue with the asserted claims by FTX
23 regarding ftx.com withdrawal claims?

24 A FTX, since they bundled all their claims against all
25 Genesis entities and asserted one claim against GGC, from

1 our perspective, historically GGC never had an account with
2 ftx.com. So we see two sets of claims. One claim should be
3 asserted against GGC and one claim asserted against GGCI.
4 So, in a nutshell, FTX just bundled them and asserted them
5 against one entity, GGC, which, again, we think is not
6 correct.

7 Q And was that information provided to the FTX debtors?

8 A Yes.

9 Q And what did they do?

10 A They ignored it. They didn't consider it. And they
11 continued to assert the same claim, \$3.8 billion against
12 GGC.

13 Q And from a business perspective, Mr. Islim, if FTX were
14 to assert that \$1.6 billion claim against GGCI, what would
15 happen?

16 A Well, for one, GGCI is not a debtor entity and it
17 doesn't have sufficient funds to cover that claim. So I'm
18 not a lawyer, but I would assume it has to go through
19 restructuring or filing for bankruptcy.

20 Q And sitting here today, Mr. Islim, who is the largest
21 creditor of GGCI?

22 A It's actually GGC, the debtor entity.

23 Q Mr. Islim, you were asked also a number of questions
24 today regarding the process, the process of assessing
25 settlements and assessing the claims and defenses. Do you

1 recall those questions?

2 A Yes, I do.

3 Q In the context of discussing the various claims,
4 defenses, et cetera, how would you describe senior
5 management's interactions with the advisors, Cleary Gottlieb
6 and M3?

7 A We have been working very closely for months now with
8 Cleary Gottlieb and with the M3 partners on this large case.
9 But again, from senior management perspective, our critical
10 work has been to establish the history, the transactions,
11 all the way from the term sheets, all the way to the
12 technical details, looking at the wallets, the transactions,
13 the deposits, the withdrawals and providing Cleary Gottlieb
14 and M3 with all the context and the history and the nuances
15 of that complex relationship.

16 Q And within the context of discussing these claims
17 between FTX and Genesis, how would you describe the special
18 committee's interactions with its advisors, Cleary Gottlieb
19 and M3?

20 A Well, I mean, the special committee is -- we have been
21 -- they have been -- this topic has been on their agenda for
22 a long time. They have been very involved in challenging
23 the factors and the outcomes that the advisors have been
24 proposing. They debated all the potential scenarios of the
25 different claims, of the different claims and all the

1 complexities of the restructuring. And they have been
2 guiding us towards a global settlement, and I'm very
3 involved in the process.

4 Q And Mr. Islim, on cross-examination you were asked
5 questions about statements in your declaration about
6 concerns about rulings in this case that could have
7 implications in other disputes with other creditors or
8 brought by GGC against other counterparties. Do you
9 remember that testimony?

10 A Yes.

11 Q Are there any other currently claims asserted by
12 creditors against the Genesis debtors in this bankruptcy?

13 A Yes.

14 Q Could you provide an example?

15 A Three Arrows Capital.

16 Q And as a general matter, how would you describe from a
17 business perspective the types of claims being asserted by
18 Three Arrows Capital against the Genesis debtors?

19 A Similar to Alameda, there are principal loans, there
20 are interest payments and there is also collateral dispute
21 as well.

22 Q And Mr. Islim, again, you were asked numerous questions
23 about the process and interactions between the advisors and
24 special committee. When did the special committee first
25 begin to discuss Alameda and FTX?

1 A Very early on, around December 2022.

2 Q And how often did the special committee discuss FTX and
3 Alameda with its advisors?

4 A Very regularly, in a regular manner. Yeah.

5 Q And when did the discussions between the parties about
6 a global settlement really begin in this case?

7 A Early July, (indiscernible) July 4th.

8 Q And after that point forward, how often did the special
9 committee and its advisors discuss the FTX settlement?

10 A At that point, it was very frequent and we discussed it
11 extensively during the special committee weekly meetings.

12 Q And finally, Mr. Islim, it's kind of come out in
13 pieces, bits and pieces today, so I just want to give you an
14 opportunity to answer this question. Based upon what you've
15 observed, why do you believe the special committee approved
16 this settlement as reasonable?

17 A There are many reasons, but most importantly,
18 eliminating the uncertainty around (indiscernible) allowing
19 us to basically bring conclusion to one of the largest
20 claims ever asserted against the estate and allowing our
21 plan to proceed and to be able to basically provide
22 liquidity and a prompt outcome to our creditors. So those
23 are the main reasons I think the settlement is fair and
24 reasonable.

25 Q Thank you for your time, Mr. Islim.

1 MR. WEAVER: Your Honor, I'd pass the witness for
2 any further questioning.

3 THE COURT: All right. Thank you.

4 MR. DALSEN: Just one --

5 THE COURT: Do you need a minute?

6 MR. DALSEN: Just one moment, Your Honor.

7 THE COURT: Sure.

8 MR. DALSEN: No further questions, Your Honor.

9 THE COURT: All right. Thank you very much. Just
10 in an abundance of caution, any further questioning of this
11 witness by any party? All right. Mr. Islim, thank you very
12 much for your testimony. You can leave the witness box and
13 make yourself comfortable elsewhere in the courtroom.

14 All right. It is now just about noon and so my
15 thought would be to proceed to argument. Let me get a sense
16 of how long folks want for argument. The reason why I ask
17 is it may be sitting in your shoes that it'd be helpful to
18 have a few minutes to tweak what you were going to say based
19 on what you've heard. It's hard to do that when you're at
20 the podium.

21 So is there a preference as to how to proceed?
22 I'm happy to take a -- I do have something at 12:30 for
23 probably about a half an hour, but other than that I'm happy
24 to work around your preference for this afternoon.

25 MR. SAZANT: Subject to the debtors, we're ready

1 to proceed. I think we need five minutes for argument or
2 so, so I don't think it'll take us into your 12:30.

3 THE COURT: Okay.

4 MR. BAREFOOT: Your Honor, I don't think ours will
5 be longer than 15.

6 THE COURT: All right.

7 MR. BAREFOOT: I would ask if we could just have a
8 very quick five-minute bathroom break.

9 THE COURT: Sure. Why don't we take a five-minute
10 break? And I feel the need to translate that because I know
11 five minutes means different things in various courts at
12 various times. So is that clock correct? About four
13 minutes to noon. So why don't we come back at 12:05. Thank
14 you.

15 (Recess)

16 THE COURT: So with that, it is the debtors'
17 motion. So let me hear from the debtor first.

18 MR. BAREFOOT: Good afternoon, Your Honor. Luke
19 Barefoot, from Cleary Gottlieb, for the debtors. Your
20 Honor, I will try to be brief, and I apologize if this
21 hearing ended up taking longer than we had originally
22 estimated.

23 THE COURT: No worries. Any requests for
24 estimates on time are always asked just to get a general
25 sense. I don't hold people to it because it's impossible to

1 know. And when I was a lawyer, I always found that question
2 incredibly uncomfortable. I understand now being here why
3 it's asked. But true for everybody, it takes what it takes.
4 So please proceed.

5 MR. BAREFOOT: So Your Honor, just let me set the
6 stage a little bit because I think from today's proceedings,
7 it may have been confusing about what we are here to do and
8 what we're not here to do. We are here to carry our burden
9 to demonstrate that this settlement is not below the lowest
10 point in the range of potential outcomes. But we are not
11 here to conduct a trial on the numerous legal and factual
12 issues that would have been litigated, which, Your Honor,
13 has the benefit of understanding from the extensive
14 exchanges we had over the lift stay proceedings and the
15 estimation proceedings.

16 We are also not here, Your Honor, and I've never
17 been in a settlement hearing where we disclose the
18 intricacies of the advice that the special committee
19 considered and weighed from counsel on the probabilities of
20 success, on the potential risks and rewards of all the
21 claims, the counterclaims and defenses had the special
22 committee instead directed the debtors to proceed with
23 litigation, either through a full claims objection or by way
24 of estimation.

25 And from the testimony you did hear today, Your

1 Honor, making any such disclosures on the substance of those
2 privileged communications that the special committee
3 weighted and debated would be reckless, contrary to our
4 fiduciary duties, and detrimental to the very constituents
5 that the objectors claim to represent where not only is this
6 settlement not a done deal until it is approved by Your
7 Honor. It has been approved by Judge Dorsey in Delaware.
8 But whereas you heard from Mr. Islim, there are numerous
9 other potential claims either held by the Debtors or
10 asserted against the Debtors that raise many of the same
11 claims and defenses. Not least of all the billion-plus-
12 dollar claims that have been asserted that we are in the
13 course of litigating with (indiscernible) capital.

14 So what are these claims, Your Honor? You heard
15 the number 3.3 billion. And as Your Honor likes to say,
16 that's a B. This element resolves those claims as well as
17 all other claims and counterclaims for a single allowed
18 claim against GGC of \$175 million.

19 As we pointed out in our papers, that is less than
20 five percent of the claims as they were asserted by FTX.
21 And by comparison, the asserted FTX claims of \$3.8 billion
22 represented 90 percent of the value of all scheduled claims
23 against GGT combined.

24 Now, you've heard much, Your Honor, about whether
25 of that \$3.6 billion, approximately \$1.6 billion in the

1 FTX.com withdrawals bucket, which the debtors vigorously
2 asserted should not have been asserted against GGC and
3 should have been asserted against their non-debtor
4 affiliate, GGCI.

5 But just two points on that, Your Honor. Even we
6 had prevailed on that and reduced the claims against GGC to
7 the approximately \$2.2 billion that excluded the FTX.com
8 withdrawals, the settlement would still be less than eight
9 percent of the remaining total asserted GGC claims by FTX.

10 And in addition, Your Honor, in light of the novel
11 and untested legal and factual uncertainties with the
12 defenses including ordinary course solvency and safe harbor
13 defenses that Your Honor is familiar with from our exchanges
14 over the estimation proceeding, even eight percent is a
15 significant victory and can't credibly be argued to be
16 outside the range of (indiscernible).

17 Moreover, Your Honor, notwithstanding the vigorous
18 advocacy and production of documents that the debtors made
19 to FTX, FTX never conceded that the FTX.com withdrawals
20 could not have been asserted against GGC. Counsel for FTX
21 had their theories and arguments as to why and how those
22 withdrawal claims could have been asserted, including on a
23 subsequent transferee theory under Section 550. Those
24 claims were never stipulated to be withdrawals, the claims
25 were never amended. And as we stand here today, they are

1 still asserted at the full \$3.8 billion value.

2 Your Honor, you also heard testimony that even if
3 GGCI were the initial transferee for those \$1.6 billion of
4 FTX withdrawal claims, that claim would have had significant
5 consequences and impacts on the debtor's estates. In fact,
6 you heard Mr. Slim testify that GGC is the largest creditor
7 of GGCI to the tune of more than \$100 million and that GGCI
8 does not have sufficient funds to satisfy a potential FTX
9 judgement.

10 Your Honor, you also heard unsurprising testimony
11 about the importance of resolving these claims given the
12 impact in terms of the time and expense of litigation as
13 well as the impact that these would have on creditor
14 distributions. The sheer size of these claims ensures that
15 the debtors are making reasonable progress to make timely
16 and sizeable distributions on account of allowed claims,
17 particularly if the lift stay motion had been granted and
18 this Court did not control the timing of an estimation or a
19 claims objection proceeding.

20 Moreover, Your Honor, as you heard, no man is an
21 island, and the FTX claims are not an island. If litigated,
22 the outcome of the FTX claims could have had significant
23 consequences, both on other potential avoidance actions that
24 the Debtors have against other defendants, as well as claims
25 that other creditors have asserted against the debtors.

1 Your Honor, I want to talk a little bit about the
2 evidence that was adduced on the timeline and process to get
3 to the resolution today. As you can see from the board
4 minutes from the Genesis Special Committee that were
5 submitted as Exhibit 6 -- and you also heard testimony on
6 this from Mr. Slim -- the special committee began receiving
7 advice and considering the FTX and Alameda potential claims
8 even before these cases were filed in December of 2022.

9 Thereafter, the special committee had regular,
10 frequent discussions concerning the FTX claims as we
11 approached the competing but intertwined contested matters
12 on the FTX debtor's lift-stay motion and in Genesis debtor's
13 estimation motion.

14 And the Court will recall from the numerous
15 hearings and status conferences of those contested matters,
16 the complexity and difficulty that those matters presented.

17 And as Exhibit 6 shows, but just to be clear, the
18 special committee met and considered the FTX claims,
19 defenses, and counterclaims a total of no less than seven
20 times leading up to their ultimate approval of the
21 settlement that's before Your Honor today.

22 Your Honor, the Court also has before it exhibits
23 1, 2, and 3, which together reflect the procedural history
24 of the hard-fought arm's length negotiations that culminated
25 in the very favorable settlement that we're seeking approval

1 of today.

2 What those exhibits show is that following more
3 than a month-and-a-half of spirited meet and confers and
4 exchanges on discovery and on the timeline and parameters
5 for litigation of our estimation motion, we went from an
6 opening offer from the (indiscernible) debtors for a reserve
7 for a claim against the estates or more than \$2 billion to
8 where we are today, a full and final resolution on all
9 claims for a single \$175 million allowed general unsecured
10 claim against GGC. And you can see that at Exhibit 1 at
11 Bates page ending in 971.

12 There's two important points, Your Honor, of the
13 course of these negotiations, all of which are in the
14 evidentiary record as exhibits 1, 2, and 3. They refute
15 some of the objectors' arguments.

16 First, while there were dramatic moves on orders
17 of magnitude by the FTX side, the Debtors made very
18 incremental and carefully-considered moves in these arm's
19 length negotiations. As you'll see from Exhibit 1 at the
20 Bates page ending in 972, the debtor's negotiations showed
21 that their movements in total went from proposing a \$100
22 million reserve up to the final and ultimately successful
23 offer of a \$175 million allowed claim.

24 Second, Your Honor, the course of these
25 negotiations across the table affirmatively show that the

1 debtors carefully and separately considered the risks and
2 value associated with a settlement construct that would have
3 preserved affirmative claims against the (indiscernible)
4 estate versus the one that is now before Your Honor that
5 provides for global peace.

6 The first several settlement constructs between
7 the parties had the former construct where they preserved
8 estate claims against FTX for subsequent litigation in their
9 court in Delaware. And you can see that in Exhibit 1 in the
10 July 4th offer, which is at Page 971 at the middle of the
11 page. Only after several weeks of further exchanges and
12 further consideration by the special committee with the
13 benefit of its advisors did discussions shift to discuss
14 both a final allowed claim rather than a reserve and second,
15 a resolution both for the FTX claims against Genesis estates
16 and Genesis' affirmative or counterclaims against FTX. And
17 you can see that at Exhibit 2 at Page 887 and Exhibit 2 at
18 Page 886 in terms of the July 17th counterproposal from
19 Genesis.

20 While obviously I think we heard repeatedly it
21 would be privileged information that the debtors would be
22 quite careless to disclose on how they got there,
23 (indiscernible) given the parallel claims that are held by
24 or may be asserted either by or against the Genesis estates.
25 This record evidence alone demonstrates that the debtors and

1 the special committee understood, assessed, and acted in the
2 exercise of their fiduciary duties and their business
3 judgment in separately considering the claims the FTX
4 debtors held in the estates and the FTX debtor's claims
5 against the Genesis debtors.

6 The assertions that they made to the contrary,
7 Your Honor, that the affirmative claims against FTX are
8 highly valuable and not subject to any defenses is ipse
9 dixit. There is no evidence to support that argument.
10 There is also no evidence on what the distributional amounts
11 from the FTX debtors could or would have been even if those
12 claims could have been successful.

13 And, Your Honor, I would just ask you again to
14 look at the spread where the parties negotiations moved. We
15 started at \$100 million reserve offer. The FTX debtors
16 started at \$2 billion. We ended pretty close to where we
17 started at \$175 million.

18 I do want to briefly, Your Honor, address Exhibit
19 8, the presentation we gave to the FTX creditors' committee.
20 I think it's not lost on Your Honor what the context of this
21 was. This was an advocacy piece designed to induce and
22 convince the FTX committee to stand down from its potential
23 objection to our settlement. Of course in that context our
24 focus was going to be not on making concessions or
25 discussing the benefits of the settlement to the Genesis

1 estates, but rather to hammer home the strengths in our
2 defenses to the FTX claims and the flaws in FTX's pursuit of
3 those claims.

4 As Your Honor mentioned at our settlement
5 conference on Friday, of course there is a natural tension
6 between the litigation position that you have to take when
7 you're actively at one another's throats and the positions
8 you have to take to meet your burden under Rule 9019. And I
9 would say that this is just one example of that and that of
10 course in the context of discussions with our adversary, we
11 had a particular focus.

12 Lastly, Your Honor, I just want to address --
13 which you heard no evidence on today, unsurprisingly -- the
14 unsupported and frankly shocking suggestion from Gemini and
15 the Fair Deal Group that the settlement should be rejected
16 because it somehow represents an attempt to manipulate or
17 secure votes from the FTX debtors in favor of the plan.

18 THE COURT: So let me ask you about that. Am I --
19 I wanted to get your view about what that would mean. I
20 mean, wouldn't that mean that the committee here is
21 essentially going along with something that is not as good
22 as it could get to somehow grant the benefit to the parent
23 company?

24 MR. BAREFOOT: Yeah, I think it would, Your Honor,
25 in breach of their fiduciary duties. I think it also

1 ignores the evidence that you do have before you. There is
2 no requirement in -- and this was carefully considered.
3 There is no requirement in the FTX settlement that they vote
4 in favor of the plan, that they vote at all. And it's very
5 clear that the allowed claims that they will have are freely
6 transferrable. They could sell them to one of our -- they
7 could sell them to Gemini, right? We have no understanding
8 or guarantee about how those votes will be noted or if they
9 will be noted.

10 The closest credible thing I think they said is
11 that we wanted to rush to get this settlement done so that
12 FTX would have a ballot to vote in the first place. But I
13 think we all would have been quite shocked if we were still
14 in the throes of estimation proceeding given the size of
15 those asserted claims if FTX had not brought a Rule 3018
16 motion to obtain a ballot in any event.

17 So I think Your Honor can dismiss that at the
18 outset. On the basis of a lack of any evidence. But what
19 evidence there is in terms of the very terms of the
20 settlement refute the idea that this is some sort of a vote
21 manipulation gamut.

22 And unless Your Honor has any questions, I would
23 just like to reserve possible time for a rebuttal. But
24 otherwise, we would rest on our papers and the evidence you
25 heard today.

1 THE COURT: All right. Thank you very much.

2 MR. BAREFOOT: Thank you, Your Honor.

3 THE COURT: And I think it makes sense to hear
4 from the Official Committee before hearing from the Ad Hoc
5 Group.

6 MR. SHORE: Thank you, Your Honor. Chris Shore
7 from White & Case on behalf of the Unsecured Creditors'
8 Committee. I want to focus on one point, transparency, and
9 otherwise rest on our papers.

10 I raise the issue of transparency at the first
11 time I appeared in this court on this case. And as I noted
12 at the last hearing, there continue to be issues of trust
13 within the creditor body about things that are coming from
14 the debtors and what the debtor's agenda is. And the
15 committee has been very focused on maintaining a level of
16 transparency.

17 But I think what you're hearing today from the Ad
18 Hoc Committee is frankly an irresponsible fueling of the
19 concerns about transparency that is not justified here, and
20 I want to address that.

21 You heard first with respect to the idea that
22 communications between the UCC and the debtors were being
23 withheld with the innuendo that there must be something
24 there to hide, that the debtors and the committee are doing
25 something that they don't want other people to see and

1 that's why they're holding it up and making it sound
2 ominous. And today the entire cross seems built around the
3 idea that it's somehow inappropriate for the debtors to be
4 withholding privileged information while seeking a
5 settlement.

6 And the issue of transparency as we've seen
7 throughout the case is that there is consequences to
8 transparency. And we saw it obviously with respect to the
9 holding of customer information. It is, as the U.S. Trustee
10 was arguing, there is the need for transparency in the
11 bankruptcy case as Your Honor pointed out. There is
12 consequences to doing that. And that consequence was
13 sufficient to justify the lack of transparency.

14 We heard it with Your Honor's ruling on the
15 privileged information. There is obviously a desire to have
16 information out there. But the consequence of requiring a
17 committee to reveal its communications with the debtors is
18 (indiscernible) of a process that needs to occur in the
19 case, that is the exchange of information between a debtor
20 and an official committee, to have a frank and open
21 discussion about the risks and rewards of attacking a
22 particular claim.

23 Here today with respect to the information that
24 Cleary provided (indiscernible) made it sound like one
25 expects in a regular way Chapter 11 case that there would be

1 a total disclosure of all information that a debtor received
2 or a decisionmaker received in determining whether or not to
3 agree to a settlement. And, quite frankly, that is an
4 irresponsible fueling of the fires of the lack of trust that
5 exists in this case. In every case claims are filed by
6 creditors. In every case disputed claims are determined
7 whether they can be ripe for settlement. In every case
8 decisionmakers for the debtor receives legal advice. That's
9 the nature of a claim. There are legal and factual aspects.
10 Factual aspects are handled by the business side people, the
11 legal aspects are handled by the professionals. And we want
12 that process to be frank and open. All creditors want that.
13 IF there are risks to a particular claim, the decisionmakers
14 need to be advised about it. If there are rewards, the same
15 thing. And so in every case, legal case, advise the
16 decisionmakers, listen, how it is fair that in some cases
17 with the claims of this size, the debtors decide to reveal
18 their board deck without redaction. We've looked at the
19 following claims, here's our advice.

20 Cynically speaking, those board decks tend to be
21 highly damaged. And what you see is advice that's given to
22 a board that is either so banal it makes no difference in
23 the context of the case or it is so managed that there isn't
24 a fair and frank and open discussion of risks and rewards of
25 litigation.

1 But in almost every case, there is legal advice
2 that is provided, and it is withheld. And it has everything
3 to do with what Your Honor pointed out, the what-if
4 scenario.

5 What if we don't get the settlement approved? For
6 example, if the advice is we have no legitimate defenses and
7 we are dead to rights with the claimants so we'd better
8 settle, if you don't get that settlement approved, that
9 document and that advice exists there in all the litigation
10 going forward. So there is -- there has to be a way to
11 manage that interface of transparency and consequence in a
12 way that allows the decisionmakers to receive a full and
13 frank and open discussion of claims, just as the committee
14 does that with its committee, without putting yourself at
15 risk if in fact creditors come forward and are able to
16 substantiate what they're doing.

17 And that's -- so what you heard today, just for
18 the people who aren't involved in bankruptcy cases, is
19 typically what you're going to get in a 9019, a
20 decisionmaker coming on and saying here are the risks and
21 rewards as we saw it. We got advice, we ran a process, and
22 we're not disclosing the legal advice.

23 And what that does is it leaves it for counsel to
24 argue the merits of the litigation. Counsel for the Ad Hoc
25 Committee has papers and an opportunity to stand in front of

1 Your Honor and say here are the legal issues that are raised
2 by the settlement, here's our opinion with respect to how
3 those legal issues would play out. Sometimes someone comes
4 forward and points out a defense that is an absolute bar to
5 a claim. But the process of the legal advice is one that
6 plays out in front of the court with the advocates, which,
7 quite frankly, is a much better way of dealing with legal
8 issues when counsel can address the Court rather than
9 quizzing an interim CEO on his knowledge of the intricacies
10 of preference laws and how those are handled in Chapter 11.

11 So if there is an issue with respect to the
12 underlying legal merits of the claim, counsel for the Ad Hoc
13 Committee or counsel for Gemini is free to stand up in front
14 of the court and argue all the merits of the underlying
15 litigation. But it is irresponsible to say that the
16 decision made by the debtors here, which as I said is made
17 in almost every case to withhold the legal advice is not a
18 basis for people to be concerned about whether or not the
19 debtors are moving appropriately here.

20 The committee has reviewed its -- satisfied its
21 fiduciary duties by looking at the claims, looking at the
22 risks and the rewards, and coming to the conclusion that a
23 full-blown litigation of these claims is a far, far worse
24 result than the settlement that's on the table.

25 So unless Your Honor has any questions,

1 (indiscernible).

2 THE COURT: All right. Thank you. I don't want
3 to jam the Ad Hoc Group. So if you want to take a break for
4 lunch and then come back. A short break, say 1:30. The one
5 thing that I did need to comment on -- and Mr. Shore has
6 given me a segue to do it -- is it would be irresponsible of
7 me in this job to not comment on the transparency issue as
8 well. And as folks are aware, I did issue an opinion
9 allowing certain information to be sealed to protect
10 important values and the safety and protection of folks who
11 are creditors here. And there's somewhat of an irony that
12 folks who are the benefit of that have complained loudly
13 about secrecy here.

14 It has in my experience never ever been the case
15 that someone has come in with a frank discussion about their
16 breakdown of each of the claims and defenses, the likelihood
17 of success. And perhaps a picture is worth a thousand
18 words. It's because the people you're litigating against
19 are over there. They're in the gallery. And they're very
20 smart people. And so putting aside the even more obvious
21 point that the FTX debtors and their professionals are not
22 potted plants that are willing to go along with anything and
23 everything that folks want to do in this case -- which I
24 guess would come as no surprise to the professionals --
25 you're always walking a tightrope.

1 So I have no problems with people debating where
2 to draw the line in the tightrope. But the notion that it
3 isn't a tightrope is -- and that it's sort of per se
4 improper is incorrect. It's irresponsible to share -- there
5 is a point which sharing certain details is just flat-out
6 irresponsible, incorrect. And it's frankly inconsistent
7 with the rule. Right? So Rule 9019 requires these almost
8 pejorative-sounding standard that the lowest point in the
9 range of reasonableness. And you can ask yourself why that
10 is. And it's partially for reasons like this. Because you
11 can't have a mini trial on things or there's no point in
12 settlement. And also having a mini trial if the case is not
13 approved, different judges will see the merits of cases
14 differently. I'll find certain people more persuasive as
15 witnesses. And if you torpedo the settlement, then you've
16 torpedoed the litigation. And you don't know how and who is
17 going to end up with the short end of the stick on that.
18 And it could be -- but I would submit to you everybody loses
19 because you're really torpedoing the process. And if you
20 don't permit settlements in bankruptcy, cases will fall
21 under the weight of the cost of bankruptcy.

22 So I haven't made a decision on this particular
23 9019, but that's information that I had to and felt duty-
24 bound to share with folks who are on the phone. This is not
25 their first bankruptcy. No one should have to apologize for

1 that. But I do want people to be aware of what some of the
2 way things work in bankruptcy, which is not necessarily
3 something you can figure out by your intuition alone.

4 So with that, I come to the Ad Hoc Group and ask
5 you what you would like to do.

6 MR. SAZANT: Your Honor, I guess we'll come back
7 at 1:30 and conclude argument then.

8 THE COURT: All right. I would imagine we should
9 be able to finish it fairly promptly. And so I'll see you
10 all then. Thank you very much.

11 (Recess)

12 THE COURT: all right. So we are here to finish
13 up the argument on the 9019 motion. Before we do that, the
14 meeting that I had at 12:30 was with other judges to talk
15 about what judges are going to be doing in proceedings now
16 that the COVID emergency has ended. And so I think I've
17 been speaking to you folks, and I spoke about it. And I
18 think judges are really going to I think be most concerned
19 about evidentiary proceedings. But -- but if you read the
20 rule carefully, the rule is concerned with what can be done
21 or not done with the public in evidentiary proceedings. So
22 what that leaves open is the ability to work with
23 participants for what is permissible, sensible for
24 participants.

25 So please think about that in this case, in other

1 cases you have. And don't be shy about talking to judges
2 about what you think you might want to do and how you want
3 to handle certain things. Again, I think the closer we are
4 to evidentiary matters, that's where things get more
5 complicated and can sometimes be, well, you can do this, but
6 you raise all sorts of ancillary concerns.

7 So -- but for participants, there is an ability to
8 try to again do things that are as efficient as possible in
9 court. And so we're all working to try to do that as much
10 as we can. So I just wanted to get that message out to all
11 of you in all our cases. And please don't be shy about
12 bringing those concerns to the court about how you want to
13 handle hearings, how you want to handle cases. Just make
14 sure to talk amongst yourselves first.

15 And we always count on the bar to (indiscernible).
16 No different. So that's why I didn't want to skip that
17 12:30 meeting because it's important that we all support and
18 are on the same page and can get the message out to all of
19 you people as soon as possible.

20 So with that said, I think we were getting ready
21 to hear from the Ad Hoc Group.

22 MR. SAZANT: Thank you, Your Honor. Thank you,
23 Your Honor. For the record, Jordan Sazant of Proskauer Rose
24 on behalf of the Ad Hoc Group.

25 The first thing I want to do right off the top is

1 dispel the notion that has been presented in this court
2 earlier that we are seeking a broad waiver of all privileged
3 communications that the debtors have had or analysis --

4 THE COURT: Well, I've already ruled on that. So
5 I think you can dispense with that. That's why I made the
6 ruling that I did.

7 MR. SAZANT: I mean with respect to the analysis
8 that underlies the 9019 motion today.

9 THE COURT: All right. Well, so then what are you
10 seeking? Right? So the concern -- so what I have -- and
11 there's a bit of a disconnect. Sometimes it happens in
12 depositions where a word you use doesn't mean the same thing
13 to the witness as to the counsel and there's a bit of
14 talking past each other. It's always unfortunate.
15 Sometimes it happens. It doesn't mean there's anything
16 nefarious. Sometimes people have a different way of viewing
17 the world.

18 So in light of this, it seems pretty clear that he
19 did not share, won't share with you or with me the -- his
20 assessment which he sort of thinks of as a numerical
21 calculation on individual claims and defenses. But it's
22 pretty clear he's got a lot of stuff about process and the
23 special committee and relying on counsel, which -- so I
24 guess the question probably from the debtor as proponent of
25 this they'll say, well, what's wrong with that, that they're

1 relying on counsel. After all, that's why they hired us, to
2 make these very bankruptcy-specific assessments.

3 So what's your response to that?

4 MR. SAZANT: Yeah. Thank you, Your Honor. I
5 think it's completely appropriate to converse with counsel
6 and to rely on counsel. But I think that this issue really
7 goes to, one, at the end of the day the debtors have a
8 burden of proof that they have to meet and they have to make
9 a determination as to what evidence they put forward and
10 what privilege they will assert versus waive in putting that
11 evidence forward to meet that burden. And we believe that
12 the debtors have not met their burden today.

13 THE COURT: So what else do you want? Right? So
14 what does that look like at the context of this case? Does
15 it say, well, we don't like this witness, we think somebody
16 should be from the special committee? Does it mean, well,
17 we want -- what kind of level of granularity before you
18 cross the Rubicon?

19 MR. SAZANT: Yeah, I think there's a few things.
20 I think Judge Glenn's decision in ResCap -- and that's at
21 491 B.R. 68-69, really distills this. And when he was done
22 analyzing this issue he said (indiscernible) having a burden
23 of showing the reasonableness of their process and also of
24 the result that they reached would want to expose their
25 deliberative process to full view, but they are not legally

1 required to do so. The debtors are the masters of the
2 evidence that they will present, but they must accept the
3 consequences of their tactful choice.

4 Here, the tactical decision to bar on privilege
5 grounds discovery (indiscernible) and into the content of
6 the board's deliberations will in turn preclude them from
7 proving those deliberations at trial to defend their
8 position that their decision was reasonable and made with
9 care.

10 And I believe that that's directly on point with
11 what's happened here. You know, we've heard from --

12 THE COURT: But normally when I get something like
13 that, what I get isn't the that as the main objection. We
14 don't know because they haven't told us. I usually get
15 we've looked at this issue and the caselaw and the facts
16 that we're aware of, and we see the world differently. And
17 then it's sort of back to the debtors. I would say sort of
18 you can almost think of it as a shifting burden, right? So
19 their burden (indiscernible) the range of reasonableness.
20 They present it, and then you get a chance to poke holes in
21 it. And if you poke a specific hole in a specific thing,
22 then they have to come back, and they do it or not.

23 What I'm sort of hearing is putting aside some of
24 the more inflammatory things in one of the joinders about
25 votes and things of that sort, which I think is highly

1 problematic as an argument for so many reasons, but thinking
2 of it just getting down to brass tacks, the merits of
3 things. So I don't see in your objection that kind of an
4 argument as to this specific claim, this specific defense.
5 And so what am I supposed to do if all I have is essentially
6 a transparency argument on the assessment?

7 MR. SAZANT: Well, respectfully, Your Honor, I
8 don't think it's just a transparency argument. I do believe
9 -- and I'm ready to go through with Your Honor our view on
10 the strengths and weaknesses of the various defenses both of
11 the claims against the Genesis debtors as well as the claims
12 the Genesis debtors have against the FTX estate.

13 And from what we've seen in the declaration, Mr.
14 Islim has said he is not involved in the negotiation of
15 settlement agreement, he can't speak to any analysis of the
16 probability of success of FTX's claims --

17 THE COURT: Well, I get that point. But again, I
18 think you're right, live by the sword, die by the sword.
19 And they have to make a choice what they want to share. And
20 that does vary from case to case.

21 But he has said somewhat candidly. There are
22 times people come in and say all sorts of stuff and then you
23 poke at it and they go, oh, you know, I was talking to those
24 people. And so he sort of skipped that part about, well,
25 I'm going to put a nice face on this. He said I'm relying

1 on my advisors. And I can tell you about the process and
2 the various steps we went through and things of that sort.

3 So I get that point. But again, I keep
4 interrupting you and I'll stop in a second. But I'm not --
5 before you get to the merits of your views on the claims,
6 I'm just having trouble figuring out what it is process-wise
7 is -- so if he got up and said we view this as more likely
8 than not to succeed, that's less likely than not to succeed,
9 this is 40 percent, is that what you're looking for?

10 MR. SAZANT: Certainly that analysis would be
11 helpful. And I think --

12 THE COURT: But why would they share that with
13 you? That's my point. With the FTX people witting over
14 there. So, again, there are times when people say we've
15 reached a point in a case that for whatever reason we're
16 comfortable sharing that. But it is a perilous thing if
17 that's what you're asking, if that's the only way to satisfy
18 you.

19 MR. SAZANT: I mean, I think the declaration
20 speaks in general terms of we believe that we have defenses
21 to these claims that speaks in general terms to we believe
22 that our claims against FTX have significant value, but
23 there's no analysis of -- outside --

24 THE COURT: But then don't you need to bring --
25 okay, so maybe we just have to get to your views of things.

1 But is it -- do you have a problem with the fact that this
2 witness is not in the special committee? Does that factor
3 into your analysis in terms of things?

4 MR. SAZANT: Certainly I think having someone from
5 the special committee who was actually involved in making
6 the decision to enter into this settlement agreement would
7 be helpful. But that's the Debtor's determination --

8 THE COURT: What if the special committee person
9 said exactly the same thing?

10 MR. SAZANT: I think that the debtors still have a
11 burden to meet, and I don't think that they've put enough
12 evidence into the record (indiscernible).

13 THE COURT: All right. So with that, I will get
14 out of your way and you can walk me through your more nitty-
15 gritty analysis.

16 MR. SAZANT: Thank you. It's always more helpful
17 for me to answer your questions anyways to make sure that
18 you understand where I'm trying to meet you.

19 So as I've said, the issue for Your Honor is not
20 complicated. The question is have the debtors satisfied
21 their burden of proof to demonstrate that the proposed
22 settlement meets the requirements of Rule 9019. And from
23 our view, the answer here is not a close call. The witness
24 in his declaration offered no more than boilerplate
25 statements. And on cross-examination, we just heard that

1 Mr. Islim was not involved in the negotiation of the
2 settlement agreement, can't speak to any analysis of the
3 probability of success of the claims or defenses going
4 either way or weigh their respective values. In fact, the
5 debtors have offered no justification for the settlement
6 beyond the large difference between the asserted amount of
7 the claims and the final settlement amount and avoiding
8 litigation. And those statements can apply to any
9 settlement that is before Your Honor. So the debtors don't
10 mention any analysis of the claims and defenses.

11 Mr. Islim today testified that the debtors
12 analyzed various factors in reaching the settlement but then
13 stated how did we analyze those factors? That I was no
14 privy to.

15 He also said that they did not boil it down to
16 numerical values to determine whether 175 was the right
17 number --

18 THE COURT: I get your point on this. But -- and
19 again, I was hoping you would give me some segue to the
20 specific views on claims.

21 MR. SAZANT: Okay.

22 THE COURT: But before I do, I'm going to violate
23 my promise to leave you alone. So you mentioned the large
24 difference -- they only mentioned the large difference and
25 the litigation cost. And I would add to that the delay.

1 And all of which I think are undisputed and self-evident and
2 all of which in a case like this weigh fairly significantly
3 in favor of determining this is within the lowest point in
4 the range of reasonableness, right? So we're talking about
5 five to eight percent of the value. You're talking about
6 litigation with the debtors in one of the largest cases in
7 the country that doesn't seem likely to wrap up any time
8 soon given the other significant issues that are in that
9 case. And the obvious litigation costs given the amount of
10 lawyers involved.

11 So I think the debtors would say that plus what's
12 said here gets them there. And my question for you is what
13 else is needed to get there from your point of view.

14 MR. SAZANT: Sure. Thank you, Your Honor. I
15 think, one, that gets you to the idea that a settlement is
16 favorable. But having to determine that 175 is the right
17 number for that settlement or that is above the lowest point
18 in the range of reasonableness, as an initial matter, you
19 know, we've heard five percent, we've heard eight percent.
20 I don't believe that that's the actual correct percentage or
21 value that we should be applying to these claims because it
22 doesn't account for the waiver of the affirmative claims
23 that the debtors have --

24 THE COURT: Yeah, but you're then applying the --
25 I understand the five and eight percent is taking things at

1 face value, right? So it's the amount of the claims
2 asserted by the FTX and the amount of claims that the
3 debtors have, putting this all in a hopper without making
4 value judgments. Because your value judgements and the
5 people close by you from FTX, their value judgements are
6 going to be markedly different.

7 MR. SAZANT: They will certainly be markedly
8 different. But what I'm saying is the five percent and the
9 80 percent only account for the claims asserted by FTX
10 against Genesis. They do not account for the claims
11 asserted the other way.

12 THE COURT: Fair. I misspoke. Yeah.

13 MR. SAZANT: And that was the only
14 (indiscernible), Your Honor.

15 THE COURT: So what else am I supposed to take
16 from the fact that the FTX judge has heard the settlement
17 agreement and has approved it? Does that have any relevance
18 here to me or no?

19 MR. SAZANT: Sure. I mean, it's above the lowest
20 point in the range of reasonableness for FTX. It doesn't
21 necessarily mean that it is for Genesis.

22 THE COURT: All right. So let's get to the nitty-
23 gritty of your numbers if you have anything to share on
24 that.

25 MR. SAZANT: Yes, Your Honor. Thank you, Your

1 Honor. So the claims against Genesis that are asserted. We
2 have the Alameda loan repayments claim asserted in the
3 amount of \$1.8 billion. These claims are subject to
4 numerous (indiscernible) defenses, including settlement and
5 payment defense under Section 546(e). But most notably, the
6 vast majority of this claim relates to loans that came due
7 in August and were paid in full on their maturity date and
8 for which the collateral supporting that loan was returned.
9 It's difficult for me to imagine anything more ordinary
10 course than that. And so it's subject to the strong
11 ordinary course defense.

12 The second claim that's asserted is the withdrawal
13 claims asserted in the amount of \$1.6 billion. But as
14 you've heard today, these are assertable against GGCI, not a
15 debtor entity, not GGC. And I understand that FTX disputes
16 that and believes that the events can be traced. But that
17 is obviously subject to further litigation.

18 The third amount is the collateral claims
19 collectively asserted in the amount of about \$400 million,
20 approximately one-third of which occurred prior to the
21 preference period and so are non-recoverable. And the rest
22 of which is subject to multiple defenses, including the
23 ordinary course of business defense, Section 546(e)
24 protection again, and contemporaneous new value related to
25 either the extension of new loans during that time period

1 supported by such collateral or agreeing to forbear on
2 immediately calling the existing loans that underly the
3 collateral call. So that's on the one hand.

4 On the other hand, Genesis has claims against FTX
5 and Alameda also broken down into three categories, but the
6 majority of which are not subject to defense.

7 You have the customer claims, which are claims
8 against FTX.com in the asserted amount of \$176 million for
9 the amount of funds locked up on FTX's trading platform as a
10 result of their bankruptcy filing and for which Genesis was
11 listed as FTX's top unsecured creditor.

12 You have the outstanding loan claims which are
13 claims against Alameda for approximately \$40 million plus
14 interest that remains due and owing under the master loan
15 agreement with GGC.

16 And then finally, the avoidance actions which are
17 asserted in the amount of \$140 million which are potentially
18 subject to similar defenses as the FTX claims against
19 Genesis.

20 Now, Mr. Barefoot in his presentation earlier said
21 that there's no evidence in the record supporting that these
22 claims have value or what that value is. But from our
23 perspective, that's really the point, isn't it? There's no
24 evidence in the record at all of the merits of these claims
25 or the defenses either way. And consequently, there's no

1 evidence in support of the settlement.

2 THE COURT: But so I don't mean to be pejorative,
3 but this sounds like somebody -- this sounds, frankly, very
4 client-driven. People who have very strong views about
5 various claims and various things that they are convinced
6 are true or not true. And as a bankruptcy judge, the minute
7 you're talking about claims that genesis has against FTX,
8 you have to be thinking about what recovery will be
9 available in FTX for any claims, right? And what do we know
10 about that at this point?

11 MR. SAZANT: At this point I believe it's too
12 early to tell other than --

13 THE COURT: We know nothing. We know nothing.
14 Right? And as to the claims against Genesis -- well, the
15 claims that genesis has, we know it's going to take a lot of
16 money and a lot of time. But we have no idea what money is
17 available for recovery.

18 And as to the claims against Genesis, I understand
19 that there are issues. If there weren't issues, there
20 wouldn't be a settlement. But we've identified -- you've
21 identified a host of very specific legal issues that would
22 have to be litigated on this side of the house that is
23 claims against genesis. Lots of defenses, whether we're
24 talking about ordinary course, whether you're talking about
25 forbearance, whether you're talking about safe harbor. And

1 if the claims are filed as they're filed, no doubt the
2 debtors, the committee, and creditors have very strong views
3 about which ones are more meritorious than others. But I
4 certainly as a judge would be I think on very poor ground to
5 say, well, the FTX debtors counsel when they filed their
6 claims, those are poorly considered and will be easily just
7 sort of chewed away. It doesn't work that way.

8 So, again, there's a question about dotting Is and
9 crossing Ts here in terms of exactly what evidence and level
10 of specificity to share in terms of things. But I just -- I
11 just have to dissuade the Ad Hoc Group of some of the --
12 some of the notions that they have about how this works.
13 The only way you figure out what these claims are worth is
14 to litigate them against the folks sitting over there who
15 are highly paid and highly professional counsel who are not
16 a potted plant. And they're not going to go along with you
17 just to make it easy.

18 And we also heard the other day in Voyager the
19 amount of fees that were at stake in litigating that case.
20 And so when you start comparing that with the settlement
21 here, that gives us some serious numbers to think about.

22 So having heard your presentation, what I hear is
23 an identification of the issues. But I don't hear a lot
24 that allows me to second-guess the lowest point in the range
25 of reasonableness on any of these things.

1 MR. SAZANT: And I think from our view all that's
2 being offered in support of the settlement for the debtors
3 to meet their burden of proof (indiscernible) the lowest
4 point in the range of reasonableness is at best an
5 identification of the issues. And that's not sufficient for
6 Your Honor to make an independent determination that the
7 Supreme Court --

8 THE COURT: Well, but I think I just said I have
9 litigation costs, I have delay, and I have a large
10 difference between the claims. And I have also to add to
11 that list the amount that we have no idea what recovery
12 might be available as creditors in FTX. So I don't think
13 that's insignificant.

14 Now, again, if the settlement here was 50 percent,
15 I think we're having a different conversation. And then I
16 think given that percentage, I think the burden sort of goes
17 up on a sliding scale the higher the recovery. I mean,
18 that's -- everybody sort of understands that as a rule of
19 the road.

20 But given what the numbers are here, again, I'm
21 just sort of frustrated trying to understand what the Ad Hoc
22 Group is trying to accomplish here and what is a -- do you
23 think it would be appropriate for me to look at some of the
24 privileged matters in camera for me to make an independent
25 determination?

1 MR. SAZANT: I think from our view, you know, the
2 analysis that we've seen -- one, I don't think that alone
3 the discrepancy in the large amount of claim that was filed
4 versus the ultimate settlement amount that was reached is
5 (indiscernible).

6 THE COURT: I would agree. But it's not by
7 itself. So would you be okay with me or would you urge me
8 to conduct an in-camera review of various things that are
9 attorney-client privilege in a way that I could review them
10 and satisfy myself as to the lowest point in the range of
11 reasonableness without -- first of all, I'm not sure it's
12 appropriate at all. But I'm just using it as a thought
13 exercise. Is that one way to check the box here?

14 MR. SAZANT: I think that is certainly one way to
15 check the box. And if Your Honor is so inclined. But I
16 don't know that I can say standing here that that would one
17 way or the other -- you know, what it would provide because
18 we don't -- haven't seen that --

19 THE COURT: No, I understand that. That's the
20 nature of in-camera review. It means that a judge is
21 getting to see things that a certain party is not, and it's
22 only used in circumstances where that information there is a
23 concern about sharing it on the record, on the public
24 record.

25 MR. SAZANT: From our view, the claims that were

1 filed by FTX against the Genesis debtors were wildly
2 overinflated and I don't think that's necessarily a matter
3 of huge dispute.

4 THE COURT: Actually, I do -- it is a claim. It
5 is subject to all the rules about filing in court where
6 you're making the representation about what's owed. And so
7 having represented government clients who filed claims, I
8 never urged them to say, well, you know, it's wildly
9 inflated, but that's fine, no one's going to care. That was
10 not my attitude, and I have not seen counsel in cases behave
11 that way.

12 MR. SAZANT: I understand. I'm not saying that
13 (indiscernible). I think the claims that were filed only
14 accounted for gross amounts that went out of the FTX estate
15 and did not account for net of amounts that were returned to
16 the FTX estate in exchange for the amounts. For example,
17 the \$1.8 billion loan claim that was (indiscernible) went
18 into in Augusta as a surety date also involved the return of
19 over a billion dollars' worth of collateral. And now I
20 understand that there are disputes as to how to value that
21 collateral and how (indiscernible) are valued. And that's
22 not an issue before Your Honor today. But to say that these
23 claims were \$3.8 billion in our view was never in the realm
24 of realistic.

25 And so when we and -- you know, in the lines on

1 what the debtors have done in analyzing these claims took a
2 look at the net value, that exchange between the two
3 parties. We believe that the realm of a possible claim
4 against the Genesis estates was somewhere in the range of
5 \$150 to \$200 million. Now, 175 falls right within that
6 range. But that doesn't account for the waiver of the
7 affirmative claims against the FTX estates.

8 THE COURT: I will say that nothing you've told me
9 allows me to reach the conclusion that this -- that what's
10 really at issue is \$150 million. You've identified issues.
11 You've identified buckets. And I understand you have
12 positions. But I haven't -- I just can't get there. I
13 understand that's your position. But if what you're asking
14 me to do is evaluate the settlement and say it's not within
15 the lowest point in the range of reasonableness because the
16 real value of the claims is \$150 million, I have not been
17 presented anything that allows me to reach that conclusion.

18 MR. SAZANT: I understand, Your Honor.

19 THE COURT: I have been presented with my clients
20 think the real value of the claim is \$150 million.

21 MR. SAZANT: And I agree that you have not been
22 presented with sufficient information to make that
23 determination. I also believe you have not been presented
24 with sufficient information to determine that 175 is
25 (indiscernible) reasonable range.

1 THE COURT: All right. Anything else, Counsel?

2 MR. SAZANT: So just to briefly touch on the
3 standards for approving a settlement. Of course
4 (indiscernible) eight-factor test to determine whether as
5 settlement is within the range of reasonableness. And I'm
6 not going to rattle through each of them, as Your Honor is
7 well aware of the standard. But applying the factors to the
8 evidence in the record in our view shows the deficiencies in
9 the debtor's case in support of the settlement. To briefly
10 touch on a few of these factors with the probability of
11 success in litigation, of course any litigation outcome is
12 uncertain. But the debtors have offered no analysis of the
13 strength and weaknesses associated with the claims and
14 defenses.

15 Of course Your Honor does not need to conduct a
16 mini-trial of the claims and defenses to determine the
17 merits of the settlement, but you at least have to be
18 advised of what they are and the facts underlying them to
19 make that determination.

20 Second, the proportion of objecting creditors. As
21 you know, the ad hoc group represents \$2.4 billion in claims
22 against GGC, including the majorities in each of the USD and
23 crypto creditor classes. Along with Gemini's opposition,
24 the majority of creditors oppose the proposed settlement.

25 And finally, the debtors (indiscernible)

1 judgement. And while the debtor obviously supports the
2 settlement, if it cannot support the settlement with a
3 factual basis that it is willing to put on the record, I
4 don't see how this Court can find that the debtor's
5 judgement is informed. The court must know what facts make
6 up the debtor's informed judgement in order to rule in their
7 favor.

8 And I will leave it at that.

9 THE COURT: All right. Thank you very much. Any
10 other party that wishes to be heard on the Debtor's motion
11 seeking approval under Rule 9019?

12 Any response by Debtors?

13 MR. BAREFOOT: Very, very briefly, Your Honor.

14 THE COURT: All right.

15 MR. BAREFOOT: Your Honor, just five very discrete
16 points. To the point that we heard for the first time that
17 they think that a fair amount of the settlement would have
18 been somewhere between \$150 to \$200 million. There is no
19 briefing, no evidence in the record as to how they arrived
20 at those numbers or what factors differed from the factors
21 that the debtors considered. And I suspect that's for the
22 very reason that we didn't want to disclose our legal
23 analysis and the probabilities of success that we ascribe to
24 claims that are being litigated not only with FTX, but with
25 a number of other parties. They recognize that that would

1 be detrimental.

2 Second, to the extent they continue to harp on the
3 ordinary course defense, they never mention, they ignore and
4 don't address the arguments that FTX had asserted that to
5 the extent they were a fraud or a Ponzi scheme, the ordinary
6 course defense would be unavailable entirely.

7 Third, Your Honor, they continue to say that the
8 \$1.8 billion should only be asserted against GGCI. Again,
9 have no response or analysis that would suggest that the
10 prospect of GGCI being sued as a subsequent transferee was a
11 very real prospect or that there would be significant
12 collateral impacts on GGC as the largest creditor at GGCI if
13 that claim were brought.

14 And just finally, Your Honor, to the extent that
15 they suggest in passing that they would have liked to speak
16 to someone from the special committee, there was never any
17 effort to serve a notice of deposition or to depose them,
18 all of whom of course are located in this district and could
19 have been produced and is within the debtor's control.

20 And I believe unless Your Honor has any more
21 questions, we amply satisfy our 9019 burden.

22 THE COURT: All right. Thank you very much.
23 Anything else from any other party before the Court
24 considers this matter closed? All right.

25 I will tell you now that I am going to hold off on

1 ruling because I want to dot some Is and cross some Ts to
2 account for the arguments and evidence today. But I will
3 tell you that I -- two impressions. One is that this --
4 that the actual objection that's been made. And there's
5 been more than one objection, and it's (indiscernible) that
6 no one wanted to stand up and take ownership of the vote
7 creation argument which I think is perilously close to the
8 rules of advocacy and what's permitted because it doesn't
9 make any sense and it's a serious accusation to make because
10 it's accusing folks of violating their fiduciary duty.

11 So putting that aside, I am not -- I am not
12 particularly persuaded by what I'm hearing from the Ad Hoc
13 Group, which strikes me as a desire to want to litigate
14 these issues to the death, but without a whole lot more or
15 even the same level of analysis that's existed going into
16 the settlement. I think there's a whole host of problems
17 with it, whether we're talking about it is relevant not by
18 itself, but with all the other factors, the amount of the
19 settlement in terms of the percentage versus the whole
20 claim, the litigation costs are highly relevant. The delay
21 is highly relevant. The uncertainty in recovery dealing
22 with any claims against FTX, the uncertainty in the defenses
23 identified, which to the extent that they have been
24 identified by the Ad Hoc Group have been responded to by the
25 debtors.

1 What I haven't figured out is if there's
2 additional Is to be dotted and Ts to be crossed in terms of
3 presenting me with some additional thought. I recognize
4 this witness is being very candid in terms of what he did
5 and what he didn't do. And he did what one would expect him
6 to do in a circumstance where you have to analyze the
7 viability of claims filed in the bankruptcy court, he relied
8 upon professionals.

9 I am not sure though of the real merits of
10 starting to do the counting exercise of each claim and each
11 defense. That begins to look an awful lot like a mini
12 trial, which is what Rule 9019 is not supposed to be.

13 And so that's where I am. I'm trying to figure
14 out if there's anything additional, as you may have
15 discerned from my question, whether it makes a difference
16 whether somebody who is on the special committee who is
17 actually making the decisions, whether that helps to push
18 things over the finish line.

19 But again, I haven't seen anything from the Ad Hoc
20 Group that raises alarm bells to me. It's a hard-fought
21 settlement. It's pretty clear that all the parties, both in
22 this bankruptcy and in the other bankruptcy, realize that
23 amongst all the difficult challenges of their cases, that
24 taking on a full litigation of all these issues was not in
25 anyone's interest. That's not a surprising proposition, nor

1 do the numbers that are appearing offend me in any way,
2 shape, or form. And again, I don't know that the Ad Hoc
3 Group has identified something for me for which the Debtors
4 have had no response and for which raises significant
5 substantive question that I feel like I need to get to the
6 bottom of.

7 So what I would do though is go back through some
8 of the exhibits. I know that some of the minutes that are
9 cited as exhibits are heavily redacted. So I will ask the
10 debtors whether they think it would be efficient or
11 appropriate for me to look at anything in camera. I am
12 trying to do this in an efficient way, mindful of the costs
13 -- one of the reasons for settling this matter is the cost
14 involved. And we've had an evidentiary hearing. We have a
15 lot of lawyers here today. And we're all mindful of the
16 fees and costs. But you have to do what you have to do. So
17 that's the reason I threw it out.

18 It may be that, like some idea that judges have on
19 the bench, it sounds good but it's a terrible idea, in which
20 case you all can straighten me out that it's -- and I will
21 not take any offense at all. You can take it as more sort
22 of a spit balling idea, much like my questions about whether
23 somebody from the special committee would make a difference.

24 So that's where I am, and I'm happy to hear from
25 the debtors if they have nay thoughts about additional steps

1 that might be appropriate or helpful that you can think of.
2 And if you want a few minutes to think about it, I'm happy
3 to do that as well.

4 MR. BAREFOOT: Could you give us just a moment,
5 Your Honor?

6 THE COURT: Yeah, that's fine. Do you want me to
7 leave the bench, give you about five?

8 MR. BAREFOOT: Literally about one minute.

9 THE COURT: Okay, that's fine.

10 MR. BAREFOOT: Hi, Your Honor. Luke Barefoot from
11 Cleary Gottlieb from the debtors.

12 In terms of the idea of having a member of the
13 special committee testify, we are -- our view at this stage
14 is that's not likely to be particularly helpful to Your
15 Honor because I believe that (indiscernible) the same
16 privilege issues and concerns and instructions from us would
17 be given.

18 THE COURT: Right.

19 MR. BAREFOOT: Given the -- not only the
20 disclosure to FTX, but given the parallel engagement of
21 other issues.

22 THE COURT: Right.

23 MR. BAREFOOT: We will, with Your Honor's
24 permission, just take under advisement whether we can submit
25 these exhibits that, as you mentioned, were heavily redacted

1 or any other materials that the special committee considered
2 for Your Honor's in camera review. And we can submit those
3 promptly.

4 THE COURT: All right. Well, what I would say is
5 let me know in the next couple of days what you intend to
6 do. I am mindful that I am not the last word on things.
7 And so the idea is to have an appropriate, fulsome record so
8 that there's not an appeal just based on lack of clarity or
9 lack of information. That just doesn't serve anybody's
10 purposes. But where that line is to be drawn is another
11 question.

12 So think about it. Maybe if you can let me know
13 in the next day or two. But I understand it to be an
14 analysis of litigation risks that is of the kind that's
15 privileged.

16 And so again, I realize that the idea sounds very
17 simple, but in execution it may be considerably more
18 complicated.

19 All right. And if you let me know in the next two
20 days now to think about what you want to do and you can just
21 maybe put a letter on the docket. And that way everybody
22 has it. And if there is something to submit that's under
23 seal, then you'll just follow whatever appropriate
24 procedures.

25 MR. BAREFOOT: Very good, Your Honor. We will do

1 so. Oh, understanding, Your Honor, that if we submit these
2 in camera, that would not be a waiver of --

3 THE COURT: No. I think that would have to be the
4 case. You're right. And I would consider it akin to when
5 there's a debate about what's privileged and what's not
6 privileged, submitting things in-camera. And so if we need
7 to get there for the first thing on for today, if you had to
8 submit some of the 77 documents, that wouldn't have been a
9 waiver of privilege on there, either.

10 MR. BAREFOOT: Understood. Just wanted to
11 confirm.

12 THE COURT: all right. And again, I don't know
13 the law on this in the context of Rule 9019. So I am --
14 it's an idea. So again, I have not sort of thought this all
15 the way through. So you have a bunch of smart people in
16 this room who will think about it. And if it's an
17 inappropriate or problematic idea, you'll let me know.

18 MR. BAREFOOT: Will do, Your Honor.

19 THE COURT: All right. And I see Mr. Zipes
20 chiming in.

21 Mr. Zipes?

22 MR. ZIPES: Greg Zipes with the U.S. Trustee's
23 Office. And, Your Honor, my intention would not be to get
24 in the way of any settlement. But again, this is an issue
25 that my office may have had a concern about. We would

1 obviously (indiscernible) the parties disagree, and I'm not
2 saying whether we're going to weigh in or not. But we would
3 get it before (indiscernible). So we would just ask to be
4 involved with that to the extent necessary.

5 THE COURT: All right.

6 MR. ZIPES: I would say the 9019 should generally
7 be supported by the record that everybody can see and that -
8 - and I think everybody agrees with that generally.

9 THE COURT: Yeah. No, I think that's right. And
10 if you have any thoughts about how to walk the line that we
11 were talking about. I mean, there are significant claims
12 here, in the billions of dollars that have been filed.
13 There's a significant settlement. It's crucial to the case.
14 There's a potential for extended litigation if the claims go
15 forward. There's also a potential for extended litigation
16 on the settlement issue for a variety of reasons.

17 And again, I think that's why I'm trying to share
18 my view that I hadn't heard anything in the objection that
19 gives me pause on the substance of the settlement. But as
20 to having sort of an ideal record in which to make the
21 findings under rule 9019, that's really where I'm at.

22 Again, just an idea. You all let me know if it is
23 not suitable or fitting for the case.

24 All right.

25 MR. BAREFOOT: Your Honor, we will discuss the

1 issue before submitting the letter you suggested.

2 THE COURT: Yeah. Please talk to all the
3 stakeholders. But I'm trying to grapple candidly with the
4 idea that say, well, we don't have enough information,
5 Judge, you don't have enough information. And again, the
6 process that has been described to me is the process that
7 one would think should occur, an iterative feedback loop
8 between the folks making decisions, special counsel, the
9 witness, and the professionals. And so sometimes that's not
10 quite the case in terms of all the people needing to be
11 consulted who were consulted. So I'm not disturbed by any
12 of the process that I've seen. And so I also haven't been
13 presented with anything specifically on any of the
14 particular claims or defenses that gives me pause that
15 somehow someone has missed the boat.

16 So what I'm left with then is a question about how
17 robust it is in the scale of one to ten vis-a-vis the 9019
18 standard. And I tend to be more cautious than not where I
19 think there's a potential for additional collateral
20 litigation that's in nobody's interest. And so -- and I'm
21 trying to avoid that. So if it's done, it's done.

22 All right. With that, I realize that we should
23 talk about dates. I think there was a request made to
24 chambers to talk about the disclosure statement hearing and
25 timing. So if the right people are here to have that

1 conversation, great. If they are not, then I can get out of
2 the way and let Ms. Ebanks do that. But I figured since
3 we're all here.

4 MR. BAREFOOT: Well, Your Honor, I think part of
5 the question was whether we wanted to cancel the September
6 26th hearing. But that is now set down for the lift stay
7 motion filed by Three Arrows Capital. It was an order
8 entered on short notice setting that as that hearing. We
9 would very much like to keep that hearing date for that.

10 THE COURT: Okay. And I think I granted that, but
11 I think I granted it by the time -- from the filing to the
12 September 26th, it actually isn't shortened notice. So --

13 MR. BAREFOOT: By one day.

14 THE COURT: Oh, it is by one day? I'm sorry. All
15 right. But I thought it wasn't implicating any sort of
16 concerns about due process.

17 MR. BAREFOOT: No, no. We supported the shortened
18 notice.

19 THE COURT: Okay. So that's fine. I'm happy to
20 leave that on. And then I guess the other dates -- so
21 you're moving the disclosure statement hearing. And I think
22 we already have one date in October. And this would be a
23 new date, is that right?

24 MR. BAREFOOT: Correct. I believe it's October
25 6th is the date that we were given that was available.

1 THE COURT: Okay, October 6th. And I think --
2 what's the other date we have in October? Later in the
3 month.

4 MR. BAREFOOT: October 24th I believe.

5 THE COURT: 24th. All right.

6 MR. BAREFOOT: Yes. Because October 24th will
7 also be the status conference on the Three Arrows Capital
8 claims objection.

9 THE COURT: Oh, right, right.

10 MR. BAREFOOT: Because it will coincide with the
11 conclusion of fact discovery.

12 THE COURT: All right. Hold on one second. All
13 right. So if my courtroom deputy thought we had time, then
14 I would have deferred to her wisdom because she is much
15 better at this than I am. So that's fine.

16 The only thing I would say is to just try to keep
17 things on the calendar that we use one or either of those
18 dates. We used the existing dates we have as omnibus
19 hearings as opposed to sort of picking up other dates
20 somewhere.

21 I certainly understand the dynamic that leads to
22 needing to adjourn things. And I don't want to stand in the
23 way of that. The problem I have in terms of managing a
24 calendar is you can have a date and then you cross it off
25 the calendar just before it happens.

1 So one way to do that is if there are things that
2 are a bit more quantumly uncertain (indiscernible) problem,
3 we can -- if you can let me know that, we could pick a
4 Monday or a Friday or a less likely to have regular
5 customers schedule so we can work our way through that. But
6 I'm happy to give you the 6th. So we would have the 26th
7 for the lift stay on three arrows, we would have the 6th for
8 a disclosure statement, and we would have the 24th, among
9 other things, the status on Three Arrows.

10 MR. BAREFOOT: Perfect, Your Honor.

11 THE COURT: All right. Did you work out with Ms.
12 Ebanks the time on the 6th?

13 MR. BAREFOOT: I don't know that we did work out a
14 time for the 6th. The time of day.

15 THE COURT: That's all right.

16 MR. BAREFOOT: I'm not sure Your Honor.

17 THE COURT: That's fine. It is what it is. All
18 right. All right. Thank you for that. I just wanted to
19 make sure I had things nailed down while you were all here.
20 And so I see Mr. Zipes.

21 MR. ZIPES: Could I just -- while we're here --
22 and it's bene a long day I know. Just two more matters.
23 One is that we're going to see the amended disclosure
24 statement when it's ready and (indiscernible). And also I
25 did want to raise to Your Honor the idea of (indiscernible)

1 in this case that's played out in different ways. And one
2 of the way that's played out is the 2019 statements that are
3 being filed are filed with redacted information. And I
4 don't know how to bring this up exactly. But I think it is
5 relevant. There is some overlap among the committees that
6 are filing. It's not necessarily a bad thing, but they are
7 the obvious -- if there were these redactions. So I'm just
8 flagging that as an issue. I think it's something to --

9 THE COURT: So am I right in saying that your
10 office is raising this just to try to figure out an
11 appropriate way to get that kind of information about the
12 overlap interest of the public domain without violating
13 anybody's appropriate confidence?

14 MR. ZIPES: Right. The Court has ruled on that,
15 obviously. So we're respecting that. But we're also making
16 note of that.

17 THE COURT: I think that's fair and that's
18 relevant. So I would certainly encourage -- it's an issue
19 that's come up in this case in terms of being identified
20 from the point of view of certain functions being relevant.
21 So I would ask the folks who are involved and implicated by
22 that concern to have a conversation and try to figure out
23 what should be on the public docket. And I am available to
24 chat about it as the need arises. So I thank you for
25 bringing it up.

1 CLERK: October 6th the time is 10:00 a.m.

2 THE COURT: Okay. October 6th is 10:00 a.m. I'm
3 being told. All right. So last note is that the debtors
4 will let me know what if anything else they want to do. And
5 then I will promptly make a decision once we sort through
6 that, recognizing that this is an important event in the
7 life of the case. So it's -- it will be dealt with
8 promptly. So let me know as soon as you can, and I will
9 then, whether it's a written decision or it's a bench
10 ruling, I don't quite know. But it will be done promptly.

11 All right. With that, anything else from the
12 Debtors?

13 MR. BAREFOOT: No, Your Honor. That concludes our
14 agenda. And thank you very much.

15 THE COURT: All right. Anything else from the
16 Committee?

17 MR. SHORE: No, Your Honor.

18 THE COURT: All right. Anything else from the Ad
19 Hoc Group?

20 MR. SAZANT: Nothing further, Your Honor.

21 THE COURT: All right. Thank you very much. Have
22 a good afternoon.

23 (Whereupon these proceedings were concluded)
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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

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